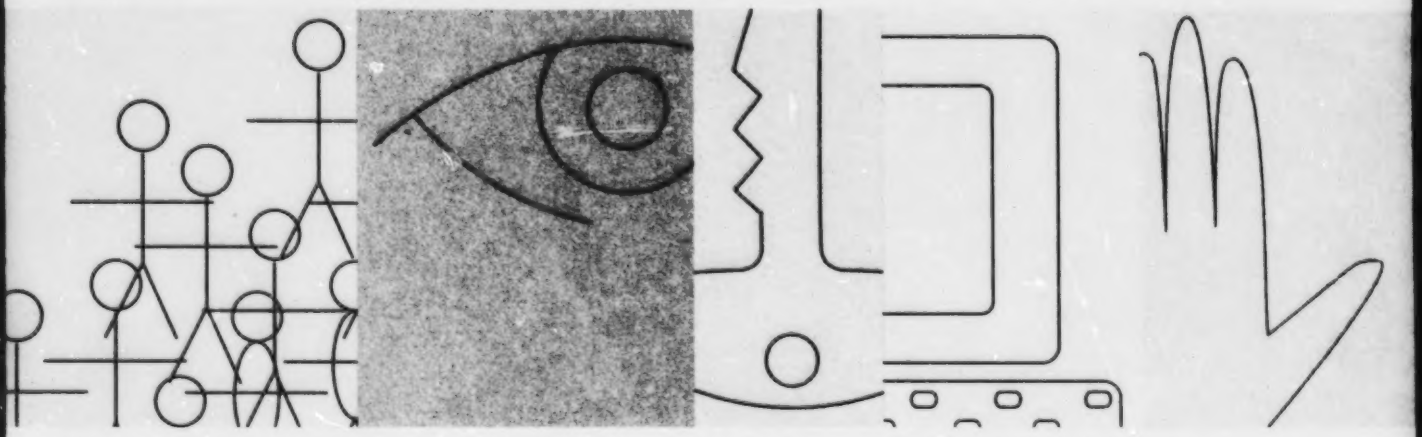
IT'S **YOUR** INFORMATION



INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

Annual Report 2001

THE PURPOSE OF THE ACTS

a) To provide a right of access to information under the control of government organizations in accordance with the following principles:

- information should be available to the public;
- exemptions to the right of access should be limited and specific;
- decisions on the disclosure of government information may be reviewed by the Information and Privacy Commissioner.

b) To protect personal information held by government organizations and to provide individuals with a right of access to their own personal information.

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

June 12, 2002

The Honourable Gary Carr
Speaker of the Legislative Assembly

I have the honour to present the 2001 annual report of the Information and Privacy Commissioner/Ontario to the Legislative Assembly.

This report covers the period from January 1, 2001 to December 31, 2001.

Sincerely yours,

Ann Cavoukian, Ph.D.
Commissioner

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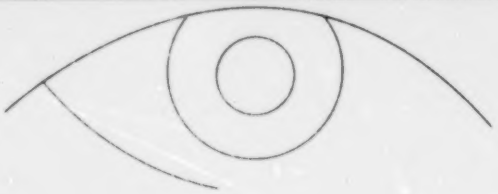

ROLE AND MANDATE

Ontario's *Freedom of Information and Protection of Privacy Act*, which came into effect on January 1, 1988, established an Information and Privacy Commissioner as an officer of the Legislature to provide an independent review of the decisions and practices of government organizations concerning access and privacy. The Commissioner is appointed by and reports to the Legislative Assembly of Ontario. The Commissioner is independent of the government of the day in order to ensure impartiality.

The *Municipal Freedom of Information and Protection of Privacy Act*, which came into effect January 1, 1991, broadened the number of public institutions covered by Ontario's access and privacy legislation.

The Information and Privacy Commissioner (IPC) plays a crucial role under the two *Acts*. Together, the *Acts* establish a system for public access to government information, with limited exemptions, and for protecting personal information held by government organizations at the provincial or municipal level.

The provincial *Act* applies to all provincial ministries and most provincial agencies, boards and commissions; colleges of applied arts and technology; and district health councils. The municipal *Act* covers local government organizations, such as municipalities; police, library, health and school boards; public utilities; and transit commissions.

Freedom of information refers to public access to general records relating to the activities of government, ranging from administration and operations to legislation and policy. The underlying objective is open government and holding elected and appointed officials accountable to the people they serve.

Privacy protection, on the other hand, refers to the safeguarding of personal information - that is, data about individuals held by government organizations. The *Acts* establish rules about how government organizations may collect, and disclose personal data. In addition, individuals have a right to see their own personal information and are entitled to have it corrected if necessary.

The mandate of the IPC is to provide an independent review of government decisions and practices concerning access and privacy. To safeguard the rights established under the *Acts*, the IPC has five key roles:

- resolving appeals when government organizations refuse to grant access to information;
- investigating privacy complaints about government held information;
- ensuring that government organizations comply with the *Acts*;
- conducting research on access and privacy issues and providing advice on proposed government legislation and programs;
- educating the public about Ontario's access and privacy laws, and access and privacy issues.

In accordance with the legislation, the Commissioner has delegated some of the decision-making powers to various staff. Thus, the Assistant Commissioner and selected staff were given the authority to assist her by issuing orders, resolving appeals and investigating privacy complaints. Under the authority of the Commissioner, government practices were reviewed and one indirect collection of personal information was approved in 2001.

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COMMISSIONER'S MESSAGE

The year began with the continuing fallout from the deflating Internet stock bubble and concerns that the economy was sliding into recession. Then, suddenly, none of that mattered.

The bombing of the World Trade Center on September 11, the mailing of anthrax spores to members of the media and political officials, and the launch of the "war" against terrorism dramatically, and perhaps irrevocably, changed our world. It is difficult to overstate the effect of these events on our lives, whether we were directly affected or simply caught up in the aftermath. Regardless, we have all been witness to the heightened levels of security in airports, border crossings and other high-risk areas.

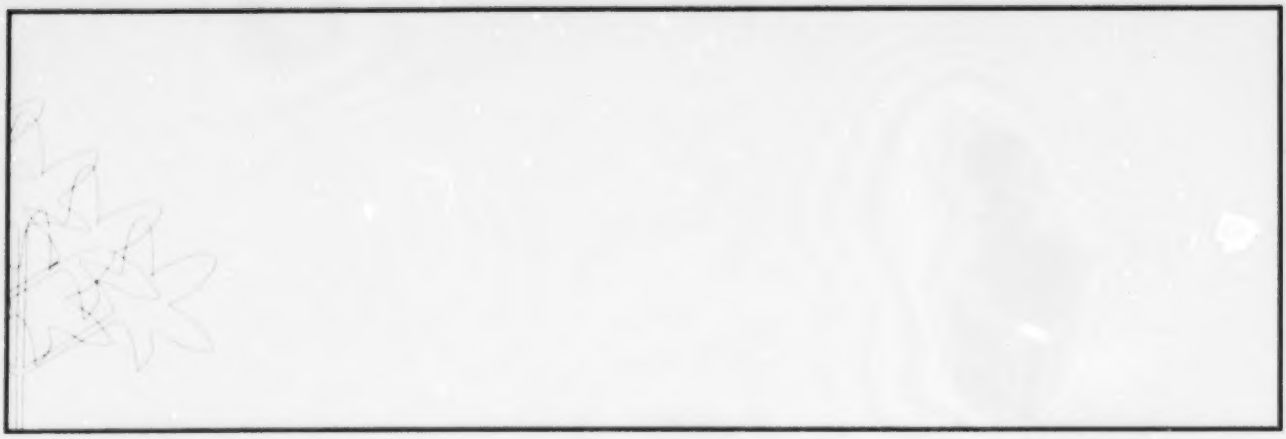
This focus on security and public safety has caused serious repercussions for privacy and for access to government information. Over the next few years, I expect we will see the introduction of new forms of identification that are more tamper resistant and less susceptible to fraud. We will also likely witness the expanded use of biometrics (the use of a physical measure such as a finger print, facial geometry or iris pattern) on passports and other identification cards. The use of video surveillance will most likely also grow in both public and private places.

Clearly there are challenges facing governments and law enforcement agents as they strive to protect their citizens. To this end, Canada has taken a number of measures, including the passage of the federal *Anti-terrorism Act* and the expenditure of significant financial resources to promote security and to fight terrorism. However, it is important to remember that the goal of these efforts is to protect our democratic society and its citizens - not to create a state in which people fear for their privacy as much as their security, or one where public openness, transparency and accountability are swept aside under the misguided view that the these fundamental democratic principles must be subservient to the needs of security.

Ann Cavoukian, Ph.D.
Information and Privacy Commissioner

Our laws recognize the important and legitimate role that law enforcement agencies play in ensuring public safety. While public safety is a vitally important value, it must be balanced against other values, including privacy, and the right to expect governments to continue to be held publicly accountable for their actions through access to information laws. Any diminishing of our rights deemed necessary in response to a recognized threat to our collective safety must be done in a manner that does not undermine the democratic traditions that characterize our society. To do otherwise would be to defeat the purpose of fighting to preserve the values we hold dear.

Throughout the fall, I attempted to raise awareness of the need for balance when governments are considering their response to these unknown threats. I wrote to the federal Attorney General expressing concerns over a number of elements of the *Anti-terrorism Act;* released a key paper, *Guidelines for Using Video Surveillance Cameras in Public Places*; and launched a new initiative called STEPs – *Security Technologies Enabling Privacy*. Our goal with STEPs is to convince governments, law enforcement agencies and security vendors that security measures do not, by necessity, have to violate people's privacy in order to be effective. I will continue to speak out against anyinitiative that I believe is ill-considered and over-reaching, and that attempts to promote security without due regard to privacy and access considerations.



LOOKING AHEAD

Thankfully, not all the events in 2001 were cause for concern. In January, the federal private sector privacy law, the *Personal Information Protection and Electronic Documents Act*, came into force. That law, which initially applies to federally regulated organizations involved in commercial activities, gives individuals the right to see and ask for corrections to personal information collected by these organizations, and governs the way this information is used and disclosed.

The Ontario government is committed to a "made-in-Ontario" private sector privacy law that will cover all organizations – including those in the health sector – presently not covered by the public sector legislation. For much of the fall, the *Ministry of Consumer and Business Services* worked on this legislation, and a draft bill was released in March 2002 for public comment. Wide-ranging consultation on the draft of the *Privacy of Personal Information Act* should lead to the development of a comprehensive and effective law that we hope will be introduced for legislative debate by mid-2002.

ISSUES

Similar to past years, this annual report will review a number of important issues that have either arisen over the course of the year or are on the horizon.

This year's report focuses on five issues. We expand on the important themes I raised earlier in this message in *The new security challenge: Making security technology privacy protective.* In keeping with our efforts to deal with appeals through the use of alternative dispute resolution methods, we discuss *Mediation: The benefits – and challenges.* The contentious issue of law enforcement agencies' use of video cameras in public places is reviewed in *Video surveillance: First make sure it's necessary; then build in very strong safeguards.* In *Use of discretionary exemptions should never be automatic*, we emphasize the need for government institutions to properly exercise discretion when making access decisions, particularly those involving access to one's own personal information. And, the complex issue of access to information held in public registries is discussed in *Public registries should be covered under Ontario access and privacy legislation.*

This report highlights the work of this office over the course of the year, including another enhancement of our popular school program that now includes a teacher's guide for Grades 11 and 12. We report on the increasing number of appeals received, and the significant number of speaking engagements and media interviews. Also highlighted are a number of joint initiatives we have undertaken to promote access and privacy throughout the public and private sectors. The demands on my office for involvement in a wide range of speaking events and collaborative and consultative projects grows significantly each year, and shows no sign of slowing down, especially in light of pending provincial privacy legislation.

PERSONAL THANKS

Each year, the demands and expectations on my office grow and my incredible staff rises to these challenges. I have received compliments from around the world on the professionalism of my staff and the high quality of our publications and decisions. I am very grateful for the dedication, determination and fundamental belief in the values of our work that each staff member brings to the job every day. Perhaps at no other time in recent memory have access and privacy matters garnered so much public interest, nor have they been such important issues of public policy. I offer my sincere thanks to my staff, without whom, the task would indeed be a daunting one.

THE NEW SECURITY CHALLENGE: MAKING SECURITY TECHNOLOGY PRIVACY—PROTECTIVE

At a recent conference, the president of a software company showed a slide stating that the difference between security and privacy was that security deals with technology and privacy deals with policies. Many companies mistakenly assume this paradigm is correct.

Firewalls, encryption algorithms and access controls, they believe, can address security issues; while privacy is ensured through policy statements, training and education. Unfortunately, it's not that simple, nor is that statement accurate.

In the United States, where privacy is a hotly debated but under-legislated topic, chief privacy officers (CPOs) tend to shy away from "architecture of privacy" discussions. (Although there are several noteworthy exceptions.)

Dr. Larry Ponemon, chief executive officer of privacy consulting firm Privacy Council, concluded from a recent survey of organizations with CPOs that there is a lot of talk but not much walk when it comes to protecting privacy in the private sector.

This may in part be attributed to the false "privacy = policy" paradigm. As a result of this misconception, companies tend to overlook the privacy protections that must be addressed at the source code and technology design level. Instead, they focus on privacy policies. While essential, policy – without the necessary focus on technology design and implementation – faces the risk of becoming window dressing.

For Ontario's private sector, there are a few lessons to be learned by examining the limitations of the privacy = policy paradigm. First, it is important to realize that there are other privacy models. In Europe, privacy means –"data protection." The focus on data creates a key role for technology in the European model. This privacy paradigm, which includes policy and legislation, has data at its epicenter. Today, the data protection discussion in Europe quickly turns to the use of pseudonyms, encryption and other privacy enhancing technologies to protect personally identifiable data.

The European Union Directive 95/46, Article 17, explicitly "requires data controllers to implement appropriate technical … measures to protect personal data…. These measures should be taken both at the time of the design of the processing system and at the time of the processing itself."

Some European countries have already introduced this requirement into national legislation. The justice minister of the Netherlands, on the eve of proclaiming its national privacy legislation, asked companies to "consider partial or complete "anonymising" … by eliminating from personal data their (consumers') personally identifying characteristics." This focus on privacy through technology is not the norm for most North American CPOs, especially if their areas of expertise centre on policy, marketing or law.

But it is exactly this focus on technology and its key role in protecting privacy that stands as a major challenge for the private sector. For those companies that have begun to invest in the technology design, or "privacy architecture," the strategic discussion soon centres on technology design issues.

There are two reasons for this. First, the personal data that an organization collects, warehouses and mines forms the foundation of customer relations management (CRM) and business intelligence activities. That foundation needs to be built with privacy-protective rules in place in order to comply with Canadian and (pending) Ontario privacy legislation. In short, it is an information management issue that has, at its core, the need to give control of the data to the individual who provided their personal information. These privacy-protective rules need to be built into the most fundamental levels of systems design. As Stanford law professor Lawrence Lessig states, "We must build into architectures a capacity to enable choice.... The architecture must enable machine-to-machine negotiations about privacy so that individuals (consumers) can instruct their machines about the privacy they want to protect."

So what can be done? What should be avoided?

Let's address the latter first. One step that should be avoided whenever possible is simply to add a privacy mandate onto that of a chief information officer or chief security officer. These functions can clash. The chief security officer is focused on ensuring that the organization's security systems give complete control of the data to the organization. The chief privacy officer needs to focus on how the control of data can remain in the hands of the individual. When the two oversight roles are combined, the privacy issues all too often get short shrift. This is not to say that both functions cannot be designed into a single piece of technology. Quite the contrary.

As sketched out in the European data protection model, this means restricting collection of personal information, introducing pseudonyms and other privacy-enhancing technologies, while instituting a layered approach to security controls.

Let us turn to what **can** be done. First and foremost, chief privacy officers must be sufficiently conversant in technology matters to communicate effectively with the chief information/technology/security officer regarding the privacy requirements that need to be built into the technology. There are many resource tools available for companies faced with burgeoning databases of consumer information that need to be stored, used and managed in a privacy-protective way.

A few companies have been quick to see a market in this area and have developed privacy management and privacy rights management applications that allow controls to be placed on personal data. These reflect the levels of consent that an individual gives for the use and disclosure of his or her personal information at the time it is collected. Other tools, such as *design embedded privacy risk management* and *privacy threat assessments*, address the privacy issues at the technology level. *Privacy impact assessments* and *privacy audits* approach the problem primarily from a risk management and post-implementation perspective.

In addition to these tools, the IPC, with the assistance of Guardent Inc. and PricewaterhouseCoopers, developed a simple-to-use *Privacy Diagnostic Tool (PDT)*. The *PDT* allows organizations that are in the first stages of addressing privacy to run a self-assessment by answering key questions based on the 10 internationally recognized fair information practices. The *PDT* is available free of charge from the IPC (**www.ipc.on.ca**).

So far, we have focused on the steps that chief privacy officers and companies that employ technology solutions can take.

There is an important role for "solution providers" as well. More and more technologies need to be developed with privacy protections already built in. These include:

- *privacy-enhancing technologies (PETs)* that use various techniques to keep control of personal information in the hands of the consumer; and
- *security technologies enabling privacy (STEPs)*, a new class of technologies that are both security and privacy enabling, to answer the heightened security concerns post-September 11, without jettisoning privacy protections.

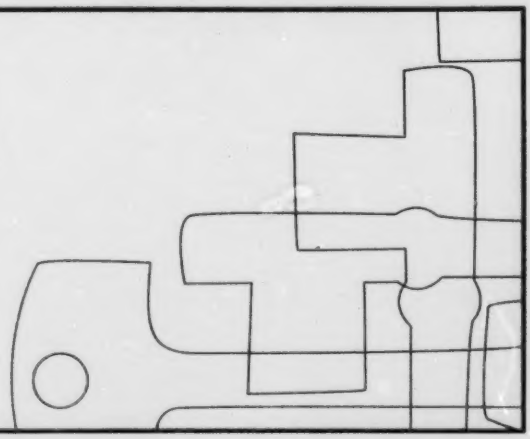
Solution providers and technology developers also have a role to play in developing privacy tools. Potentially privacy-invasive technologies, such as biometrics, electronic surveillance, data mining, and various types of imaging, sensing and other emerging technologies can be reframed and designed to serve as effective security tools in the fight against terrorism – **without giving away privacy in the process.** By building privacy safeguards into the design and framework of security technologies, we can improve the actual safety of our airports, offices and computer networks without creating the tools and conditions that allow for unchecked data mining, massive surveillance and invasive body scanning.

Once established, it will be equally important to ensure that sound policies incorporating security/privacy-related technologies are built into the standard operating procedures and practices of organizations.

The challenge for chief privacy officers in both the private and public sectors is to harness the privacy tools and resources for the benefit of both governments/corporations and citizens/customers. It is also the role of the chief privacy officer to challenge technology developers to design solutions that address both privacy and security, without sacrificing either.

ONTARIO CPO

The Ontario government has made e-government (the online delivery of services) a priority. Increasingly, the personal information of citizens is being collected, stored and used in electronic form. The need for the government to address privacy as an issue that is distinct from security is therefore greater than ever. In the *Recommendations* section of this report, Commissioner Cavoukian urges Ontario to appoint its first chief privacy officer.



MEDIATION: THE BENEFITS — AND CHALLENGES

"The Commissioner may authorize a mediator to investigate the circumstances of an appeal and to try to effect a settlement of the matter under appeal" (section 40 of the municipal *Act* and section 51 of the provincial *Act*).

In Ontario, we are fortunate that the ability to resolve appeals through mediation is addressed directly in the statutes. Mediation, simply defined as negotiation between parties that are assisted by a neutral third party, is the preferred method of dispute resolution at the IPC.

Some of the key benefits of mediation are:

- **Better results**: the resolution is created by the parties.
- **Speed**: generally faster than formal adjudication.
- **Cost**: time, money and emotion can be saved through early resolution of the dispute.
- **Control**: the parties maintain control of the dispute and its resolution.
- **Improved relationships**: can preserve or enhance the relationship between the parties.

Based on 14 years of experience in mediating appeals, it is the IPC's view that mediation can be applied to the full range of issues raised in an appeal: exemptions, existence of records, jurisdiction, and procedural matters. We are proud that between 70 per cent and 75 per cent of appeals are fully resolved without the need for a formal adjudication and order. And even when appeals are not fully settled, the majority are resolved in part, meaning that fewer issues and/or records proceed to the adjudication stage.

Even though mediation has been a successful strategy, IPC mediators face a number of unique challenges:

LACK OF COMMITMENT

Some institutions do not take full advantage of the benefits of the mediation process. At the outset, they maintain their position and state a preference for adjudication because they believe that their decisions are "correct." In so doing, institutions often forgo opportunities to put a human face on government, one that listens to and works together with its customers to try to resolve issues.

SIGNIFICANT POWER IMBALANCE

While power imbalances are not uncommon in disputes, in the context of an FOI appeal, there is usually a major power imbalance: the appellant does not know what the information is that has been denied – after all, that is the subject of the dispute – while the institution knows and has control of all of the information.

MEDIATION PROCESS

Because the denial of information is at the heart of most FOI disputes, the mediation process must be more circumspect than in a more typical mediation. The mediator cannot just call a meeting of the parties, put all of the information on the table and then assist them in reaching a resolution. Instead, the mediator must ensure that the content of the records in dispute is not disclosed during mediation discussions – a barrier not present in more traditional mediation.

INSTITUTION'S MEDIATION REPRESENTATIVE

The institution's "mediation representative" is often not the person who has a detailed knowledge of the records at issue in the appeal, nor – and perhaps more importantly – the person who has the authority to bind the institution during mediation discussions. In most provincial institutions, the Freedom of Information and Privacy Co-ordinator is not the delegated decision-maker, yet is the institution's mediation representative. Obtaining approval for mediation proposals is too often a time-consuming process yielding unsatisfactory results and requiring repeated forays up the chain of command. An unfortunate result of this delay is that the passage of time often lessens the incentive for settlement and increases the appellant's mistrust of government.

ACCESS VS. PRIVACY

In part, the *Acts* balance the public's right of access to government records with an individual's right to protection of personal information held by government. Yet, the public's perception is that under "freedom of information," an individual is entitled to access another individual's personal information. IPC mediators have an educational role to play in explaining the purposes of the *Acts* to appellants.

What is the IPC doing to meet these mediation challenges?

PROMOTING MEDIATION AS THE PREFERRED METHOD OF DISPUTE RESOLUTION

Our access and privacy brochures highlight mediation as the IPC's preferred method of dispute resolution. *Perspectives*, the IPC's semi-annual newsletter, contains a section devoted to mediation success stories. And at speaking engagements with institutions and the public, we encourage mediation by including it as part of our presentations.

INCREASED USE OF FACE-TO-FACE MEDIATION AND TELECONFERENCING

In the past, mediation at the IPC was most often conducted by telephone, one party at a time, primarily due to concerns about discussing the content of the records in exemption-based appeals. Over time, however, we have found that even where appeals are based solely on denial of access to certain records, it is not only possible to mediate with the parties together, it is also hugely beneficial in terms of each party gaining an understanding of the issues, perspectives and interests of the other.

What can you do to meet these mediation challenges?
All parties must display:

- A commitment to the principles of mediation, *and an* investment in the mediation process;
- A non-adversarial attitude, and a willingness to "think outside the box" and identify creative, innovative resolutions to particular issues.

Institutions, in particular, must:

- Recognize that access decisions should be made in the spirit as well as the letter of the *Acts*;
- Have in place a decision-making structure that permits the person mediating on behalf of the institution to bind the institution or, at the minimum, to quickly obtain the necessary authority.

Over the course of the next several months, the IPC will be working with the Ministry of the Attorney General on a pilot project focused specifically on removing barriers to mediation.

Mediation is widely accepted today in both the civil and administrative law communities, and its use is expanding to include almost every conceivable type of dispute. While clearly there are particular challenges in mediating FOI appeals, by working together we can overcome them.

VIDEO SURVEILLANCE: FIRST MAKE SURE IT'S NECESSARY; THEN BUILD IN VERY STRONG SAFEGUARDS

As video surveillance technology becomes more accessible, government organizations have shown increased interest in using it as a law enforcement tool. This interest was accelerated by the September 11 terrorist attacks in the United States.

In Ontario, municipalities and police services are beginning to consider the use of public video surveillance systems with increasing frequency.

As the IPC has been emphasizing for over five years, there are significant risks to personal privacy associated with a video surveillance system, unless very strong safeguards are in place.

Institutions governed by the provincial and municipal *Acts* that are considering implementing a public video surveillance program must ensure that there is a proper balance between the public safety benefits of video surveillance and an individual's right to be free of unwarranted intrusion into everyday life.

Pervasive, routine and random surveillance of ordinary, lawful public activities interferes with an individual's privacy. Widespread video surveillance – Britain is a case in point, with approximately 2.5-million closed-circuit television cameras – is clearly not acceptable in Ontario.

The IPC recognizes that, in limited and defined circumstances, a video surveillance camera installed in a public place may be an appropriate tool available to law enforcement agencies to help safeguard security and detect or deter criminal activity. Consequently, in October 2001, the IPC issued *Guidelines for Using Video Surveillance Cameras in Public Places* to assist institutions in deciding whether the collection of personal information by means of a video surveillance camera is lawful and justifiable as a policy choice, and, if so, how privacy-protective measures can be built into the system. The *Guidelines* address:

- Important considerations prior to making a decision to install a video camera. There must be a strong business case predicated on need;
- Developing the video surveillance policy;
- Designing and installing the equipment;
- Developing and posting signage for proper notice to the public;
- Access, use, disclosure, retention, security and disposal of records acquired through use of the surveillance camera;
- Auditing and evaluation of the system; and
- Resources available for those considering the introduction of public video surveillance cameras.

Video surveillance should never be embraced as a panacea. Its use as a tool should be limited and specific, and the decision to introduce a public video surveillance camera should only be made after careful consideration of the following:

- Have other measures of deterrence or detection been considered and rejected as unworkable?
- Can the use of each camera be justified on the basis of verifiable, specific reports of incidents of crime or significant safety concerns?

- Have the privacy risks of introducing the camera been assessed and weighed?
- Has there been consultation with stakeholders, including the IPC and the public?

Once a decision has been made by an institution to introduce video surveillance, a written policy (as outlined in the *Guidelines*) should be put in place governing the operation of the system. Some of the requirements are:

- A description of the use of the surveillance equipment, including which personnel are authorized to operate it, under what supervision, times when the surveillance will be in effect, and the location of the equipment;
- The institution's obligations with respect to notice, access, use, disclosure, retention, security and disposal of records in accordance with the *Acts;*
- A statement that the institution will maintain control of and responsibility for the equipment at all times.

It is important that institutions ensure through their documented policies that information gathered by video surveillance is only used for public safety or law enforcement purposes, and that it is retained for a very limited length of time. In addition, clear signs should be put in place notifying the public of the presence of any camera in the surveillance area. It is also essential that institutions conduct regular audits of their compliance with their policies and procedures governing video surveillance as well as the use and security of the surveillance equipment.

A critical requirement is that video surveillance systems are periodically evaluated to determine whether they are effective and justified on an ongoing basis.

Pervasive use of video surveillance technology, as seen in Britain, has not yet been seriously considered in this province. On the contrary, municipalities and police services have only considered the strategic use of individual video surveillance cameras in specifically designated locations.

To date, the IPC has had constructive discussions with institutions considering introducing video surveillance technology. The IPC believes it is essential for institutions considering video surveillance to continue to consult with this office in order to ensure that privacy considerations are accurately identified and adequately addressed.

USE OF DISCRETIONARY EXEMPTIONS SHOULD NEVER BE AUTOMATIC

The provincial and municipal *Acts* provide members of the public with a right of access to both general records under the control of institutions and to personal information about them held by provincial and municipal government bodies.

The *Acts* state clearly that exemptions to this right of access should be limited and specific. In framing the exemptions, the legislators made most exemptions discretionary, and only a few mandatory.

Mandatory exemptions **require** that the information be withheld in all cases.

Discretionary exemptions, on the other hand, **permit** institutions to withhold information, but do not **require** them to.

The exercise of discretion is a key component of the access process, reflecting the purposes of the *Acts*, which bear repeating:

- Information should be available to the public;
- Individuals should have a right of access to their own personal information; and
- Exemptions to access should be limited and specific.

IPC orders have established the proper approach to follow when exercising discretion. As a general statement:

> *An institution's exercise of discretion must be made in full appreciation of the facts of a particular case, and upon proper application of the applicable principles of law (Order 58).*

What is a proper exercise of discretion? In making a decision in response to an access request, institutions must consider the individual circumstances of the request, including factors personal to the requester, while also ensuring that decisions regarding access conform to the policies and provisions of the *Acts*. While the same factors are not relevant in every circumstance, it is important that all factors that are relevant receive careful consideration.

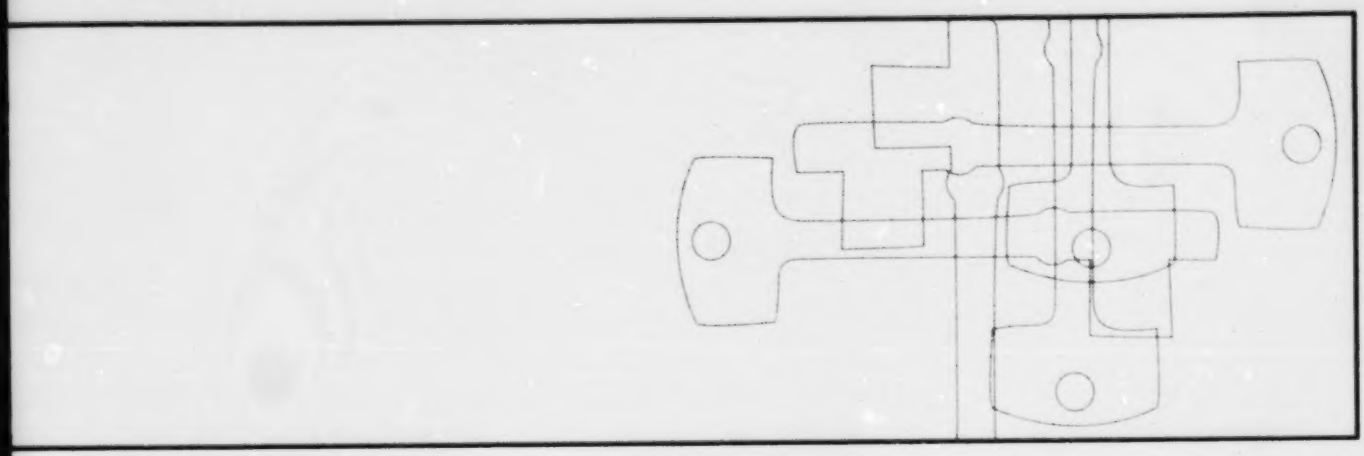
What is an improper exercise of discretion? It is improper for an institution to adopt a fixed rule or policy and apply it in all situations. To do so would constitute a fettering of discretion and would represent non-compliance with the institution's statutory obligations. Individual circumstances must be considered.

While the same principles regarding the exercise of discretion apply to both general record requests and personal information requests, the decision-making process is slightly different.

When a government institution receives a request for access to general records, the institution must deny access to the information if a mandatory exemption applies, but may disclose the information even if it qualifies for one or more discretionary exemptions.

In contrast, when an institution receives a request for access to that requester's own personal information, it must disclose this information unless one or more discretionary exemptions apply.

It is important to note that exemptions considered mandatory when requesting general records (for example, third



party commercial information, cabinet records, or another individual's personal information) are discretionary when the request is for a requester's own personal information.

In all instances when dealing with discretionary exemption claims, it is important for institutions to realize and accept that just because a record or information satisfies the requirements of the exemption, that does not necessarily mean the record cannot be disclosed. The institution must take the added step of deciding, in the particular circumstances, if the record or the requester's personal information should be disclosed despite the fact that it qualifies for exemption.

In the IPC's experience, institutions too often apply discretionary exemptions as if they were mandatory. That is, they claim a discretionary exemption simply because they can. They don't take the important step of assessing the particular circumstances and deciding whether the record or information should nonetheless be disclosed.

Exercising discretion under the *Acts* is a complex process and it is very important that institutions understand how it should be done - whether in the context of general requests, or in the expanded context of personal information – and doing it as a routine part of the decision-making process

The IPC recently completed a joint project with the Toronto Police Service on the exercise of discretion in the specific context of section 38(b) of the municipal *Act*: *Exercising Discretion under section 38(b) of the Municipal Freedom of Information and Protection of Privacy Act: A Best Practice for Police Services* (**www.ipc.on.ca/english/pubpres/papers/discre.htm**). Hopefully, this document will be of assistance to all institutions when discharging their responsibilities to properly exercise discretion.

PUBLIC REGISTRIES SHOULD BE COVERED UNDER ONTARIO ACCESS AND PRIVACY LEGISLATION

Ontario's *Freedom of Information and Protection of Privacy Act* and *Municipal Freedom of Information and Protection of Privacy Act* (the *Acts*) contain privacy protection rules governing the collection, retention, use and disclosure of personal information by government organizations. However, publicly available personal information is exempted from the privacy rules in the *Acts*.

The largest collections of publicly available personal information in Ontario are known as public registries. The *Acts* do not specifically refer to "public registries." A public registry, though, can be defined as a registry, list, roll or compendium of personal information that is maintained by a government organization pursuant to a statute, regulation, policy, or administrative practice. It is open, in whole or in part, for public inspection under a specific law or policy.

Examples of public registries that are maintained by government organizations and open to the public include the land registry, the Personal Property Security Registration system, election finance records, and the property assessment rolls.

There are sound policy reasons for allowing the public to inspect public registries that contain personal information about individuals. For example, the availability of election finance records strengthens democracy by allowing members of the public to scrutinize who has been donating money to the campaigns of politicians. Similarly, public access to personal property or land registry records enhances consumer protection by enabling buyers to determine if a would-be seller is the actual owner of a car or house and whether there are any liens or other encumbrances on these pieces of property.

In a paper-and microfiche-based world, public registries enjoyed a limited measure of privacy protection because of what has been described as their "practical obscurity." In order to inspect a registry, list or roll, an individual would have to travel to a government office during prescribed office hours. In addition, documents in public registries could only be copied or searched on a record-by-record basis.

But personal information in public registries that are available in electronic format or posted on the Internet can be easily retrieved, searched, sorted, manipulated and used for purposes that have no connection to the original purpose for which the information was collected.

With the click of a mouse, an individual can send an entire public registry to another person via e-mail. Direct marketing firms can use computer software to collect, sort and combine names, addresses and telephone numbers from public registries and target consumers with junk mail and unsolicited telemarketing pitches.

More significantly, if a public registry is posted on a government Web site and can be searched by name and address, criminals such as stalkers and domestic abusers may be able to trace the whereabouts of their intended victim through the Internet. Identity thieves can more easily access and combine personal information from such registries with information gleaned from other sources in order to steal the identities of unsuspecting members of the public.

As reported in the press in November 2001, police in Hillsboro, Oregon, charged a man with identity theft and forgery after they raided his home and found death certificates, Social Security cards, and two copies of a CD-ROM containing the state's entire Department of Motor Vehicles (DMV) database of vehicle and driver information.

Oregon Driver and Motor Vehicle Services examined the CD-ROMs and found that they contained information from two DMV bulk lists that had been legitimately purchased by another party in 1997 and 1999 and had somehow ended up in the hands of the individual who was arrested by the police.

In Ontario, the Ministry of Transportation does not sell its databases of vehicle and driver information to the public in bulk form. However, the incident in Oregon illustrates what can happen if government organizations make collections of personal information available to the public in electronic format.

The IPC believes that the complete exclusion of publicly available personal information from any statutory privacy protections in the *Acts* is unbalanced, outdated and potentially dangerous in a digital world. Although the IPC has issued at least two orders over the past five years that call on the Ontario government to revisit the wholesale exclusion of publicly available information from statutory privacy protections, no action has yet been taken.

There are a handful of jurisdictions around the world, such as New Zealand and the Australian state of New South Wales, which have privacy legislation containing special privacy rules that specifically apply to personal information in public registries. In addition, under Canada's federal private-sector privacy legislation, the *Personal Information Protection and Electronic Documents Act* (PIPEDA) and its accompanying regulations, federally regulated commercial organizations can only collect, use and disclose personal information from "public registries" for a purpose that is directly related to the purpose for which this information appears in the registry.

The Ontario government has announced its intention to introduce privacy legislation that would apply to the provincially regulated private sector. The IPC will be working to ensure that this legislation and its accompanying regulations contain provisions that are substantially similar to the clauses in PIPEDA that apply to publicly available personal information.

One option, which would mirror the PIPEDA approach, would restrict provincially regulated private organizations' ability to collect, use and disclose personal information from a public registry to a purpose that is directly related to the purpose for which this information appears in the registry. The implementation of a purpose-limitation rule such as this would help address the privacy of individuals whose personal information is found in public registries in Ontario. However, it is also important to ensure that the valid public policy considerations that underlie the right of access to information in public registries also receive consideration in this context.

It's also important to recognize that private-sector privacy legislation governing publicly available personal information would only impose controls on one group of users: provincially regulated private organizations. It would not cover individuals or, more importantly, establish a framework for the government organizations that administer public registries in Ontario.

In the recommendations section of this annual report, the Commissioner urges the government to seek public input about whether the *Acts* should be changed to modernize the treatment of personal information contained in public registries. Until a full public debate has taken place, government organizations that administer public registries should err on the side of caution when deciding whether to make public registries available electronically. During 2002, the Commissioner will be contributing to this debate by releasing a paper that proposes an approach that would strike a balance between the public's right to access personal information in public registries for legitimate purposes, and the privacy rights of individuals whose personal information is found in such registries. This paper will also offer some privacy-protection tips for the government organizations that administer public registries.

COMMISSIONER'S RECOMMENDATIONS

(1) PRIVACY LEGISLATION

I urge the Ontario government to make the proposed new privacy legislation one of its priorities for 2002. If given the attention it deserves, this much needed legislation, which will cover the private sector and the health sector, may be passed before the end of this year. Once this becomes law, privacy protection for Ontarians will extend beyond the public sector.

(2) VIDEO SURVEILLANCE

The collection of personal information via video surveillance by provincial and municipal government organizations is subject to Ontario's *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*. I strongly recommend that any organization subject to one of these *Acts* that is considering the possibility of using a video surveillance camera in a public place:

- review, at the outset, our *Guidelines for Using Video Surveillance Cameras in Public Places* and follow it closely, **(http://www.ipc.on.ca/english/pubpres/papers/video-gd.htm)**;
- advise my office early in the process, and meet to discuss the application of our *Guidelines*.

(3) CHIEF PRIVACY OFFICER

One of the fastest growing professional designations is that of chief privacy officer (CPO). Recognizing the growing importance of meeting customer and client expectations, and the requirements of legislation, an increasing number of organizations are appointing a senior executive with specific responsibility for privacy, not security, since experience shows that privacy often takes a back seat when both functions are combined.

The Ontario government has made the online delivery of services, or e-government, a priority. Increasingly, the personal information of citizens is being collected, stored and used in electronic form. The need for the government to address privacy as an issue that is distinct from security is greater than ever. I recommend that the Ontario government appoint a senior public servant as chief privacy officer to help ensure that its programs are designed and delivered in a manner that both protects and enhances the privacy of Ontarians.

(4) PUBLIC REGISTRIES

Increasingly, government organizations are making public registries available in electronic format, which has significant privacy implications. The government should initiate a public consultation process to identify how Ontario's *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* can be amended to properly deal with the treatment of personal information in public registries in the electronic world. One option that should be raised during the public consultation is whether the *Acts* should be amended to include special public registry privacy principles similar to those in New Zealand and the Australian state of New South Wales. To ensure an open and transparent process, the government should invite submissions from all relevant parties, including businesses; non-governmental organizations; journalists; regular users of public registries; the public bodies that administer public registries; and the general public.

WORKING TOGETHER

In 2001, the third year of the IPC's *Institutional Relations Program*, the Tribunal Services Department continued to work collaboratively with a number of municipal and provincial institutions as part of its ongoing efforts to:

- Gain a better understanding of the business of our institutional clients in order to deal more effectively with appeals and complaints; and
- Provide IPC mediators and institutional staff with an opportunity to better understand each other's roles and needs, and develop more productive relationships.

We are pleased with the positive response to this initiative. The enthusiasm of institutions in meeting and working with our mediators, coupled with their creative, yet practical, suggestions for projects of joint interest, confirm that there are many ways outside the statutory confines of appeals and complaints where we can work together to promote an understanding of and commitment to the *Acts*.

Here are some highlights of our work in 2001 with the municipal sector:

TORONTO POLICE SERVICE

The exercise of discretion as it relates to the right of access to a requester's own personal information is a key component of the access process. It is particularly important for police services as they regularly receive requests of this nature. Together with the Toronto Police Service, we produced *Exercising Discretion under section 38(b) of the Municipal Freedom of Information and Protection of Privacy Act – A Best Practice for Police Services*. This *Best Practice* is equally applicable to all municipal and provincial institutions dealing with requests for personal information under section 38(b) of the municipal *Act* or section 49(b) of the provincial *Act*.

FREEDOM OF INFORMATION POLICE NETWORK

Members of the IPC's municipal mediation team accepted an invitation from the *Freedom of Information Police Network* to address its semi-annual meeting and training workshop. More than 60 Freedom of Information Co-ordinators and their staff from local police services across the province and from the Ontario Provincial Police were in attendance.

CITY OF OTTAWA

The new City of Ottawa, which had just gone through a major amalgamation, wanted to work with the IPC to produce a quick reference for its councillors regarding their roles and responsibilities under the *Act*. The guide we produced together, *Working with the Municipal Freedom of Information and Protection of Privacy Act – A Councillor's Guide*, provides a brief description of the city's corporate program for access to information and protection of privacy, with particular focus on how the *Act* applies to both records requested by municipal councilors, and to records in the possession of these councilors.

And, here are some highlights of our work with the provincial sector:

MINISTRY OF NATURAL RESOURCES

The ministry's Information and Privacy Co-ordinator approached the IPC about working on a joint project. Using the ministry's intranet site as our guide, we jointly produced the *Backgrounder for Senior Managers and Information and Privacy Co-ordinators: Raising the profile of Access and Privacy in your institution*. The *Backgrounder* includes a number of practical suggestions.

JOINT EDUCATIONAL SESSIONS — JUSTICE SECTOR

IPC mediators from the provincial team joined with access and privacy staff from the ministries of the Attorney General, Solicitor General and Correctional Services for a day-long educational session. The 2001 session (the third year for this program) included a presentation by the IPC on our privacy complaint investigation process, and guest speakers from the ministry's Special Investigations Unit and Victim Services, both of whom explained their programs.

PROMOTING MEDIATION

Mediation is the preferred method of dispute resolution at the IPC. In 2001, we invited 12 co-ordinators and their staff to a meeting. (In most cases, they were relatively new co-ordinators or were from institutions that do not receive a large number of requests.) The purpose was to talk about our approach in mediating appeals and to share with them some of our mediation successes. We also met separately with the Ministry of Health co-ordinator and her staff. And finally, we met with the access and privacy unit of Management Board Secretariat to talk about both our approach to mediation and to provide an overview of the varied initiatives we were undertaking as part of our *Institutional Relations Program*.

REQUESTS BY THE PUBLIC

Provincial and municipal government organizations are required under the *Acts* to submit a yearly report to the IPC, based on the calendar year, on the number of requests for information or corrections to personal information they received, how quickly they responded to them, what the results were, fees collected, and other pertinent information.

For the third straight year, the number of freedom of information requests filed with provincial and municipal government organizations has increased. Across Ontario, there were 22,761 requests filed in 2001, compared to 21,768 in 2000, an increase of 4.56 per cent.

Provincial government organizations received 11,110 requests, compared to 10,824 the previous year. Of these, 3,143 were for personal information and 7,967 were for general records. Municipal government organizations received a total of 11,651 requests, compared to 10,944 in 2000. These included 4,410 requests for personal information and 7,241 for general records.

The Ministry of Environment, once again, reported the largest number of requests received under the provincial *Act* (3,873). The Ministry of Health and Long-Term Care (1,679) was next in line, followed by the Ministry of the Solicitor General (1,570) and the Ministry of Labour (988). Together, these four ministries accounted for 73 per cent of all provincial requests.

At the municipal level, police services boards received more than half (56.5%) of the requests. Municipal corporations (including municipal governments) were next (40.5%), followed by school boards (1.3%) and boards of health (1.2%).

Overall, 55.6 per cent of the requests completed under the provincial *Act* were answered within the statutory 30-day requirement. (The 30-day compliance percentage for provincial organizations where a Minister is the head was 52.5 per cent.) In all, 78.6 per cent of provincial requests were answered within 60 days, a six per cent drop from the previous year. Under seven per cent of the requests took more than 120 days, up three per cent from 2000.

As they have for a number of years, municipal government organizations outperformed their provincial counterparts by responding to 78.4 per cent of the requests within 30 days. Overall, 93 per cent of municipal requests in 2001 were answered within 60 days, with two per cent taking more than 120 days to complete.

(Please see the chapter entitled *Response Rate Compliance*, which follows this chapter, for a more detailed discussion of the performance of provincial and municipal organizations.)

Last year, we began to report on the source of access to information requests. This practice, common in other jurisdictions, adds to our knowledge of who utilizes and benefits from the freedom of information process. About 65 per cent of the requests under the provincial *Act* were from businesses, the same figure as last year. The majority of the requests under the municipal *Act* came from individuals (56%), down slightly from just over 62 per cent last year.

Under the exemption provisions of the *Acts*, government organizations can, and in some cases must, refuse to disclose requested information. In 2001, the most frequent exemption cited in response to personal information requests was the protection of personal information (sections 49 and 38, for provincial and municipal organizations, respectively). For general record requests, the most frequent exemption cited was the protection of personal privacy, (sections 21 and 14 for provincial and municipal organizations, respectively).

Individuals also have the right to request correction of their personal information held by government. In 2001, provincial organizations received five requests for corrections and refused

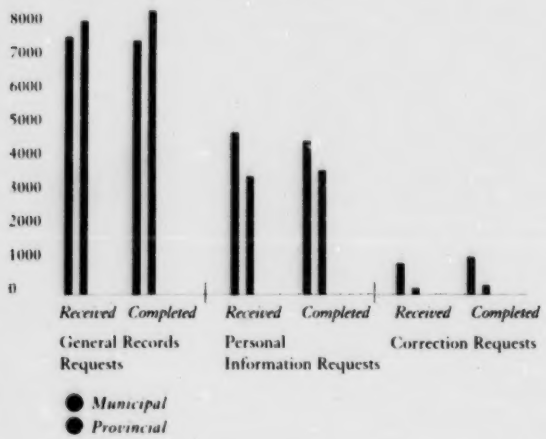
four. Municipal organizations received 709 correction requests and refused 10. When a correction is refused, the requester may attach a statement of disagreement to the record, outlining why the information is believed to be incorrect. During 2001, there were three provincial and nine municipal statements of disagreement filed.

In addition to application fees, the legislation permits government organizations to charge additional fees for providing access to information under certain conditions. Where the expected charge is over $25, a fee estimate is to be provided before work begins. Organizations have discretion to waive payment where it seems fair and equitable to do so after weighing several specific factors.

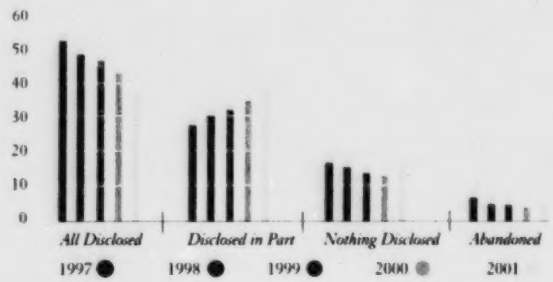
Provincial institutions reported collecting $52,785.10 in application fees and $273,287.66 in additional fees in 2001. Municipal institutions reported receiving $58,071.30 in application fees and $120,427.40 in additional fees.

Provincial organizations most often cited search time as the reason for collecting additional fees. Search-time costs were mentioned in 50 per cent of cases where fees were collected, followed by reproduction costs in 27 per cent and shipping costs in 13 per cent. Municipal organizations cited reproduction costs in 47 per cent of cases, search time in 25 per cent and preparation in 18 per cent.

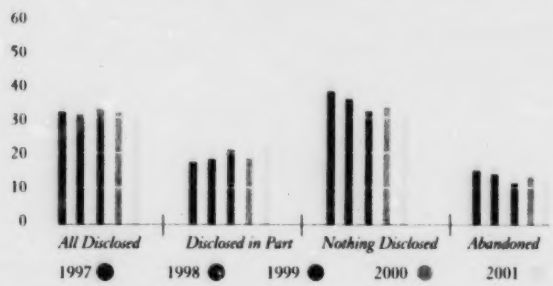
Requests Received and Completed – 2001



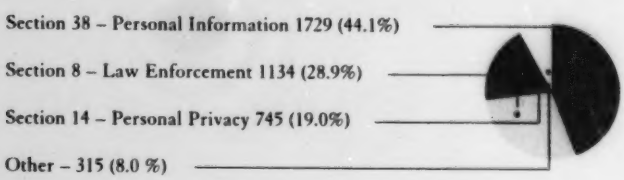
Outcome of Municipal Requests – 2001 (%)



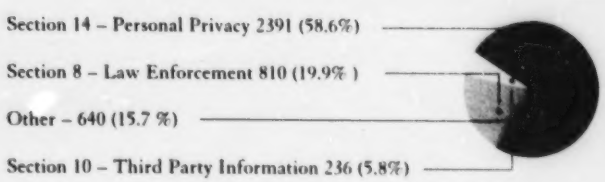
Outcome of Provincial Requests – 2001 (%)



Municipal Exemptions Used
Personal Information – 2001


Section 38 – Personal Information 1729 (44.1%)
Section 8 – Law Enforcement 1134 (28.9%)
Section 14 – Personal Privacy 745 (19.0%)
Other – 315 (8.0 %)

Municipal Exemptions Used
General Records – 2001


Section 14 – Personal Privacy 2391 (58.6%)
Section 8 – Law Enforcement 810 (19.9%)
Other – 640 (15.7 %)
Section 10 – Third Party Information 236 (5.8%)

Provincial Exemptions Used
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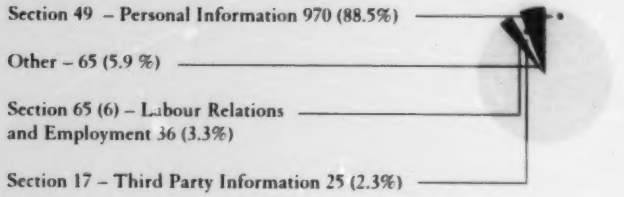
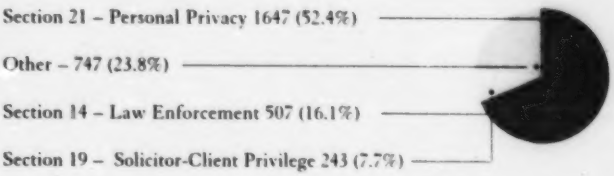

Section 49 – Personal Information 970 (88.5%)
Other – 65 (5.9 %)
Section 65 (6) – Labour Relations and Employment 36 (3.3%)
Section 17 – Third Party Information 25 (2.3%)

Provincial Exemptions Used
General Records – 2001


Section 21 – Personal Privacy 1647 (52.4%)
Other – 747 (23.8%)
Section 14 – Law Enforcement 507 (16.1%)
Section 19 – Solicitor-Client Privilege 243 (7.7%)

Average Cost of Provincial Requests for 2001

Personal Information	$9.82
General Records	$42.22

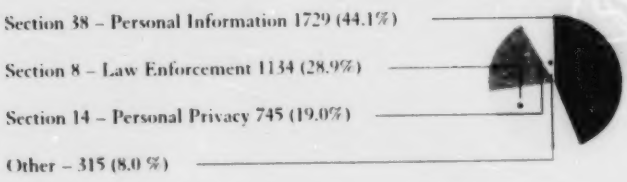
Average Cost of Municipal Requests for 2001

Personal Information	$7.21
General Records	$22.29

Cases in Which Fees Were Estimated – 2001

	Provincial	*Municipal*	
Collected in Full		38.1%	1487
Waived in Part		1.7%	67
Waived in Full		60.2%	2353
Total Application Fees Collected (dollars)		$58,071.30	
Total Additional Fees Collected (dollars)		$120,427.40	
Total Fees Waived (dollars)		$5,951.08	

Municipal Exemptions Used Personal Information – 2001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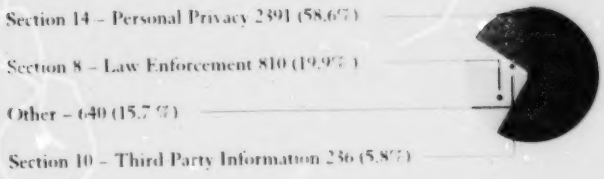
Municipal Exemptions Used General Records – 2001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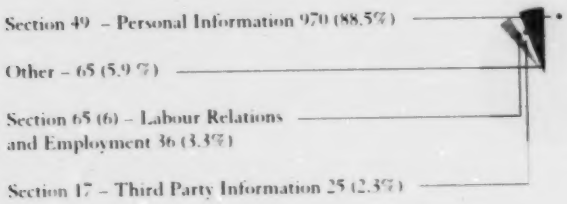
Provincial Exemptions Used Personal Information – 2001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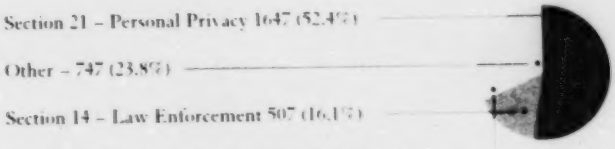
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Average Cost of Provincial Requests for 2001

Personal Information	$9.82
General Records	$42.22

Average Cost of Municipal Requests for 2001

Personal Information	$7.21
General Records	$22.29

Cases in Which Fees Were Estimated – 2001

	Provincial		*Municipal*	
Collected in Full	90.9%	4540	38.1%	1487
Waived in Part	5.9%	297	1.7%	67
Waived in Full	3.2%	159	60.2%	2353
Total Application Fees Collected (dollars)	$52,785.10		$58,071.30	
Total Additional Fees Collected (dollars)	$273,287.66		$120,427.40	
Total Fees Waived (dollars)	$14,659.45		$5,951.08	

RESPONSE RATE COMPLIANCE

As part of the IPC's efforts to encourage greater compliance with the response requirements of the *Acts*, we have, starting with the 1999 annual report, reported on the compliance rates of individual government institutions, as well as the overall compliance rates for provincial and municipal institutions. The accompanying charts continue that process for provincial institutions and selected municipal institutions.

PROVINCIAL INSTITUTIONS

A number of provincial ministries continued to achieve a high level of success in 2001 in meeting the 30-day response standard, while receiving a large volume of requests. The IPC wishes to recognize their efforts. In addition to the Ministry of Health and Long-Term Care – which we will discuss in more detail later in this report – the ministries of Community and Social Services, Consumer and Business Services, Finance, Labour and Transportation answered more than 80 per cent of their requests within the required time frame. The Ministry of the Attorney General also achieved an impressive compliance rate of 86 per cent – up from 72.4 per cent in 2000, which pleased us greatly.

Overall, 55.6 per cent of provincial requests were answered within 30 days in 2001, up slightly from 54 per cent in 2000. This figure shows the continued, albeit gradual, improvement noted in last year's annual report. The lion's share of the responsibility for sub-standard compliance rests with one ministry - the Ministry of the Environment. If this ministry's poor compliance rate (13.6%) is removed from the calculation, the overall provincial compliance rate moves to 75.7 per cent, a much more acceptable figure.

In 2001, only six ministries had compliance rates under 60 per cent. In addition to the Ministry of the Environment, which will be discussed in greater detail below, the Ministry of Energy, Science and Technology was successful in processing only one of its 11 requests within the 30-day standard (9.1%); the Ministry of Citizenship's rate was only 38.9 per cent for its 54 requests; the Ministry of Tourism, Culture and Recreation had a compliance rate of only 40 per cent on its 25 requests; and the Ministries of Natural Resources and Correctional Services had rates of 48 per cent and 54.2 per cent, respectively. In the case of the Ministry of Citizenship, if the response rate for one of its agencies, the Ontario Human Rights Commission (15.8%), is removed from the calculation, that ministry's compliance rate increases dramatically to 93.7 per cent.

In the 1999 annual report, three ministries were identified as having particularly poor compliance rates - Health and Long-Term Care, Environment and Natural Resources. The ministries of Solicitor General and Correctional Services were added to the list in the 2000 annual report. The IPC has been participating in a number of joint initiatives with these ministries, which, with the exception of Environment, showed improvement in compliance in 2001.

MINISTRY OF HEALTH AND LONG-TERM CARE

The Ministry of Health and Long-Term Care has made remarkable progress over the course of the past two years. The ministry's 2001 compliance rate was an excellent 83.3 per cent, almost double the 43.2 per cent rate of 1999. We know this improvement did not come easily. It reflects the diligent work by the Information and Privacy co-ordinator and her staff. Equally important, it required the demonstrated commitment and support of senior ministry officials. All staff involved in these dramatic improvements deserve sincere congratulations and recognition for their leadership within the Ontario Public Service.

Provincial: Number of Requests Completed in 2001 *(includes only Boards, Agencies and Commissions where the Minister is the Head)*

Ministry	Requests Received in 2001	Requests Completed in 2001	Within 1-30 days No. of Requests	%	Within 31-60 days No. of Requests	%	Within 61-90 days No. of Requests	%	More than 90 days No. of Requests	%
Agriculture, Food & Rural Affairs		30			3	10.0			4	13.3
Attorney General/ONAS		289			15	5.2			18	6.2
Cabinet Office		86			5	5.8			2	2.3
Citizenship/OWA		54			2	3.7			22	40.7
Community & Social Services		403			37	9.2			3	0.7
Consumer and Business Services		225			2	0.9			0	0.0
Correctional Services		262			37	14.1			62	23.7
Economic Development & Trade		20			2	10.0			0	0.0
Education		55			10	18.2			10	18.2
Energy, Science & Technology		11			2	18.1			4	36.4
Environment		3890			1780	45.8			721	18.5
Finance		199			33	16.6			1	0.5
Health and Long-Term Care		1818			197	10.8			62	3.4
Intergovernmental Affairs		8			1	12.5			0	0.0
Labour		785			71	9.1			19	2.3
Management Board Secretariat		46			5	10.9			0	0.0
Municipal Affairs and Housing		56			12	21.4			3	5.4
Natural Resources		150			40	26.7			18	12.0
Northern Development and Mines		24			5	20.8			3	12.5
Solicitor General		1670			258	15.5			286	17.1
Tourism, Culture & Recreation		25			6	24.0			5	20.0
Training, Colleges and Universities		48			7	14.6			5	10.4
Transportation		255			19	7.4			3	1.1

Top Six Municipal Corporations *(Population under 50,000) based on numbers of requests completed*

	Requests Received in 2001	Requests Completed in 2001	Within 1-30 days No. of Requests	%	Within 31-60 days No. of Requests	%	Within 61-90 days No. of Requests	%	More than 90 days No. of Requests	%
Town of Caledon (44,820)		86			5	5.8			0	0.0
Township of Chatsworth (5,924)		10			0	0.0			0	0.0
Township of Dorion (417)		14			0	0.0			0	0.0
Town of Georgina (35,035)		38			0	0.0			0	0.0
County of Haldimand (40,486)		17			4	23.5			0	0.0
Town of Halton Hills (44,725)		10			0	0.0			0	0.0

↑ up 5% or more from 2000
↑↑ up 15% or more from 2000
↓ down 5% or more from 2000
↓↓ down 15% or more from 2000

Provincial: Number of Requests Completed in 2001 *(includes only Boards, Agencies and Commissions where the Minister is the Head)*

Ministry	Requests Received in 2001	Requests Completed in 2001	Within 1-30 days No. of Requests	%	Within 31-60 days No. of Requests	%	Within 61-90 days No. of Requests	%	More than 90 days No. of Requests	%
Agriculture, Food & Rural Affairs	32	30	21	70.0↑	3	10.0	2	6.7	4	13.3
Attorney General/ONAS	254	289	248	85.8↑	15	5.2	8	2.8	18	6.2
Cabinet Office	91	86	77	89.6↑↑	5	5.8	2	2.3	2	2.3
Citizenship/OWA	55	54	21	38.9	2	3.7	9	16.7	22	40.7
Community & Social Services	417	403	354	87.9↑	37	9.2	9	2.2	3	0.7
Consumer and Business Services	242	225	222	98.7↑	2	0.9	1	0.4	0	0.0
Correctional Services	222	262	142	54.2	37	14.1	21	8.0	62	23.7
Economic Development & Trade	27	20	18	90.0↑↑	2	10.0	0	0.0	0	0.0
Education	44	55	34	61.8↑↑	10	18.2	1	1.8	10	18.2
Energy, Science & Technology	9	11	1	9.1↓↓	2	18.1	4	36.4	4	36.4
Environment	3871	3890	528	13.6↓	1780	45.8	861	22.1	721	18.5
Finance	225	199	159	79.9	33	16.6	6	3.0	1	0.5
Health and Long-Term Care	1679	1818	1514	83.3↑↑	197	10.8	45	2.5	62	3.4
Intergovernmental Affairs	8	8	7	87.5↓	1	12.5	0	0.0	0	0.0
Labour	780	785	675	86.0	71	9.1	20	2.4	19	2.3
Management Board Secretariat	48	46	36	78.2↑	5	10.9	5	10.9	0	0.0
Municipal Affairs and Housing	53	56	38	67.8↑↑	12	21.4	3	5.4	3	5.4
Natural Resources	153	150	72	48.0↑↑	40	26.7	20	13.3	18	12.0
Northern Development and Mines	25	24	16	66.7↑↑	5	20.8	0	0.0	3	12.5
Solicitor General	1570	1670	1004	60.1	258	15.5	122	7.3	286	17.1
Tourism, Culture & Recreation	29	25	10	40.0	6	24.0	4	16.0	5	20.0
Training, Colleges and Universities	43	48	35	72.9↑↑	7	14.6	1	2.1	5	10.4
Transportation	269	255	228	89.4↑	19	7.4	5	2.1	3	1.1

Top Six Municipal Corporations *(Population under 50,000) based on numbers of requests completed*

	Requests Received in 2001	Requests Completed in 2001	Within 1-30 days No. of Requests	%	Within 31-60 days No. of Requests	%	Within 61-90 days No. of Requests	%	More than 90 days No. of Requests	%
Town of Caledon (44,820)	82	86	80	93.0	5	5.8	1	1.3	0	0.0
Township of Chatsworth (5,924)	10	10	10	100.0	0	0.0	0	0.0	0	0.0
Township of Dorion (417)	14	14	14	100.0	0	0.0	0	0.0	0	0.0
Town of Georgina (35,035)	38	38	38	100.0	0	0.0	0	0.0	0	0.0
County of Haldimand (40,486)	20	17	12	70.6	4	23.5	1	8.3	0	0.0
Town of Halton Hills (44,725)	11	10	10	100.0↑↑	0	0.0	0	0.0	0	0.0

↑ up 5% or more from 2000
↑↑ up 15% or more from 2000
↓ down 5% or more from 2000
↓↓ down 15% or more from 2000

MINISTRY OF NATURAL RESOURCES

The Ministry of Natural Resources also continues to improve. Its compliance rate increased from 30.9 per cent in 2000 to 48 per cent in 2001. This ministry deals with a high proportion of requests that require third party notifications and time extensions, and when these factors are taken into account, the overall compliance rate improves to 65 per cent. There is still room for significant improvement, but we are confident that the ministry is taking its responsibilities seriously and that senior officials and the co-ordinator's office are committed to steady progress on meeting compliance requirements.

MINISTRY OF THE ENVIRONMENT

The Ministry of the Environment continues to have serious problems. For the second year in a row, the ministry's 30-day compliance rate has declined, dropping from 25.2 per cent in 2000 to only 13.6 per cent in 2001. This situation is clearly not acceptable. It not only means that the needs of requesters under the *Act* are not being met, but the sub-standard performance of the ministry is reducing the overall compliance rate for the provincial sector by a full 20 per cent. Although the ministry started to address its compliance problems during 2001, it has been a slow beginning, and steps must be taken to turn the situation around during 2002.

That being said, we are optimistic that this turnaround can be achieved, for a number of reasons. Most importantly, senior-level ministry officials are now committed to making the necessary improvements. The ministry has redesigned the management structure for its FOI program, hiring a manager to lead a newly formed organization consisting of *Freedom of Information and Privacy*, *Environmental Bill of Rights* and *Information Resource Centre* programs. The manager in turn has put together a multi-year operational plan targeted at improved FOI operations in a number of areas. This plan has been approved by senior ministry officials for implementation in 2002 and, if successful, the ministry should be positioned to realize a dramatic turnaround in the administration of its FOI program. Training opportunities have been provided for current FOI office staff; additional staff has been approved; and a plan has been put in place to analyze and develop options for processing routine property-related requests. The ministry has also retained a consultant to process backlogged and time-sensitive FOI requests, and has approved the acquisition of a case management system, a critically important tool for all Freedom of Information and Privacy co-ordinators' offices.

This ministry has a long way to go. However, with the building blocks now in place, the ministry must be in a position to demonstrate significant improvement in its compliance rate during 2002.

MINISTRIES OF THE SOLICITOR GENERAL AND CORRECTIONAL SERVICES

The IPC began to work with the Ministries of the Solicitor General and Correctional Services because the 30-day compliance rates for these two ministries in 2000 were under 60 per cent. Both of these ministries have improved their performance during 2001. The Ministry of the Solicitor General's compliance rate increased by five per cent (to 60%), and the Ministry of Correctional Services increased its compliance rate by two per cent (to 54%). These improvements were made at the same time that the combined request levels for the two ministries increased by more than 12 per cent in 2001.

The Freedom of Information and Privacy (FOIP) office for the ministries of the Solicitor General and Correctional Services is situated in North Bay. Although part of the broader justice cluster, which also includes the Ministry of the Attorney General, the North Bay office is largely an autonomous unit, with primary decision-making responsibility delegated to the

Assistant and Deputy Co-ordinators. The record holdings of these ministries is heavily weighted to personal information or mixed personal information, requiring a high degree of care when processing requests.

For the past several years, the FOIP office has been looking at ways to improve the FOI program. A pilot project was introduced to enhance record-retrieval times, with promising initial results; files for Solicitor General/Corrections requests were transferred to the Attorney General's FOIP office for processing, to deal with changes in the level of file volumes among the three ministries; and a trial "buddy system" was implemented among the program analysts in the FOIP office to ensure sufficient back-up and support. All of these are positive steps.

With approximately 270 primary record holder sites between the two ministries, one of the main challenges is the delay encountered in retrieving records from the field. The expansion of the pilot project, if successful, should provide the opportunity to introduce improvements for the system as a whole. Because a large number of Solicitor General requests involve records held by the Ontario Provincial Police, it is important that senior management of the police force provide the necessary leadership in improving FOI compliance, and that training initiatives directed toward OPP officers be implemented. It is also important to acknowledge that timely record retrieval is dependent on sufficient staffing levels and backup positions in all program areas.

A case management system with good reporting and tracking functions is critical to the effective processing of FOI requests, particularly in high volume institutions. Given the number of requests processed by these ministries, a case management system is certainly warranted for these two ministries as well as the Ministry of the Attorney General.

Both ministries have taken good first steps during 2001. Effective FOI program administration is now clearly in the minds of senior ministry officials, and staff of the FOI office is enthusiastic and creative in looking for ways to improve. A number of good ideas are on the table, and – with the support of senior management –we are optimistic that there will be significant levels of improvement during 2002, moving both of these ministries out of the sub-standard group of provincial institutions as far as compliance rates are concerned.

MUNICIPAL INSTITUTIONS

Municipal institutions continued to achieve a higher level of compliance with the 30-day standard than provincial institutions in 2001. Overall, municipal government organizations responded to 78.4 per cent of requests within the required time frame. This figure is down from the 2000 level of 81.6 per cent, and an overall compliance rate of 85 per cent in 1999.

Like the provincial sector, the overall municipal compliance rate is significantly impacted by sub-standard performance of one institution, in this case the Toronto Police Service. If this institution's 55.1 per cent compliance rate is removed from the calculation, the municipal sector rate increases to 84.5 per cent – the superior performance level traditionally met by municipal institutions.

The accompanying charts provide the compliance rates for the municipal institutions that responded to the most requests.

MUNICIPALITIES

Municipalities have been grouped according to their population. Among larger institutions, Mississauga, Ottawa and York achieved very high compliance rates. The City of Toronto continued to achieve an admirable compliance rate (71.6%), despite a significant increase in the number of requests processed during 2001. The City of Hamilton also increased its compliance rate – to 61.4 per cent, up from 52.4 per cent in 2000.

Once again, the compliance rates of small to medium-sized municipal corporations continued to be outstanding during 2001. Of note is the fact that, although Oakville and Richmond Hill responded to more than triple the number of requests during the year, their compliance rates were a remarkable 99.4 per cent and 97.8 per cent respectively.

POLICE SERVICES

With the exception of Toronto, police services generally complied with the 30-day standard at a superior rate. Most notably, the Halton Regional Police Service maintained the perfect record achieved in 2000 by responding to all requests within the required time frame. As well, the Niagara Regional Police Service increased its compliance rate from 78.9 per cent in 2000 to 93.1 per cent in 2001.

BOARDS OF HEALTH

This year, the IPC is including the results of boards of health in responding to requests for access to information. Although the number of requests received by these boards was limited, they achieved outstanding results in responding within the necessary time frame. We list the five boards with the highest number of requests responded to. Four of these reported a perfect 100 per cent compliance record in 2001. And the fifth had a still outstanding rate of 95.5 per cent.

Top Five Municipal Corporations *(Population between 50,000 and 200,000) based on numbers of requests completed*

	Requests Received in 2001	Requests Completed in 2001	Within 30 days No. of Requests	%	Within 31-60 days No. of Requests	%	Within 61-90 days No. of Requests	%	More than 90 days No. of Requests	%
City of Burlington (140,288)	51	51	45	88.2↓	0	0.0	0	0.0	6	13.3
City of Kitchener (177,858)	327	327	324	99.1	3	0.9	0	0.0	0	0.0
County of Lambton (122,405)	179	179	179	100.0	0	0.0	0	0.0	0	0.0
Town of Oakville (132,696)	156	154	153	99.4	1	0.6	0	0.0	0	0.0
Town of Richmond Hill (110,160)	228	226	221	97.8	4	1.0	1	0.5	0	0

Top Five Municipal Corporations *(Population over 200,000) based on numbers of requests completed*

	Requests Received in 2001	Requests Completed in 2001	Within 30 days No. of Requests	%	Within 31-60 days No. of Requests	%	Within 61-90 days No. of Requests	%	More than 90 days No. of Requests	%
City of Hamilton (459,638)	168	153	94	61.4↓↓	38	24.8	7	7.4	14	14.9
City of Mississauga (549,218)	253	257	247	96.1↑	10	3.9	0	0.0	0	0.0
City of Ottawa (719,543)	217	190	183	96.3	7	3.7	0	0.0	0	0.0
City of Toronto (2,162,147)	2228	2152	1540	71.6↓	282	13.1	126	8.2	204	13.2
Regional Municipality of York (684,170)	35	34	28	82.4↓↓	6	1.0	0	0.0	0	0.0

Top Five Municipal Health Institutions *(based on numbers of requests completed)*

	Requests Received in 2001	Requests Completed in 2001	Within 30 days No. of Requests	%	Within 31-60 days No. of Requests	%	Within 61-90 days No. of Requests	%	More than 90 days No. of Requests	%
Algoma Health Unit	7	7	7	100.0	0	0.0	0	0.0	0	0.0
Brant County Health Unit	64	64	64	100.0	0	0.0	0	0.0	0	0.0
Hastings & Prince Edward Counties Health Unit	22	22	21	95.5↑	0	0.0	1	4.5	0	0.0
Oxford County Board of Health	7	7	7	100.0	0	0.0	0	0.0	0	0.0
Windsor-Essex County Health Unit	17	18	18	100.0	0	0.0	0	0.0	0	0.0

Top Five Police Institutions *(based on numbers of requests completed)*

	Requests Received in 2001	Requests Completed in 2001	Within 30 days No. of Requests	%	Within 31-60 days No. of Requests	%	Within 61-90 days No. of Requests	%	More than 90 days No. of Requests	%
Durham Regional Police Service	514	492	403	81.9↓	86	17.5	3	0.7	0	0.0
Halton Regional Police Service	507	542	542	100.0	0	0.0	0	0.0	0	0.0
Hamilton Police Service	976	977	735	75.2	190	19.4	39	5.3	13	1.8
Niagara Regional Police Service	462	461	429	93.1↑↑	31	6.7	1	0.2	0	0.0
Toronto Police Service	2398	2265	1247	55.1↓	751	33.2	195	15.6	72	5.8

↑ up 5% or more from 2000
↑↑ up 15% or more from 2000
↓ down 5% or more from 2000
↓↓ down 15% or more from 2000

Top Five Municipal Corporations *(Population between 50,000 and 200,000) based on numbers of requests completed*

	Requests Received in 2001	Requests Completed in 2001	Within 1-30 days No. of Requests	%	Within 31-60 days No. of Requests	%	Within 61-90 days No. of Requests	%	More than 90 days No. of Requests	%
City of Burlington (140,288)		51			0	0.0			6	13.3
City of Kitchener (177,858)		327			3	0.9			0	0.0
County of Lambton (122,405)		179			0	0.0			0	0.0
Town of Oakville (132,696)		154			1	0.6			0	0.0
Town of Richmond Hill (110,160)		226			4	1.0			0	0

Top Five Municipal Corporations *(Population over 200,000) based on numbers of requests completed*

	Requests Received in 2001	Requests Completed in 2001	Within 1-30 days No. of Requests	%	Within 31-60 days No. of Requests	%	Within 61-90 days No. of Requests	%	More than 90 days No. of Requests	%
City of Hamilton (459,638)		153			38	24.8			14	14.9
City of Mississauga (549,218)		257			10	3.9			0	0.0
City of Ottawa(719,543)		190			7	3.7			0	0.0
City of Toronto (2,162,147)		2152			282	13.1			204	13.2
Regional Municipality of York (634,170)		34			6	1.0			0	0.0

Top Five Municipal Health Institutions *(based on numbers of requests completed)*

	Requests Received in 2001	Requests Completed in 2001	Within 1-30 days No. of Requests	%	Within 31-60 days No. of Requests	%	Within 61-90 days No. of Requests	%	More than 90 days No. of Requests	%
Algoma Health Unit		7			0	0.0			0	0.0
Brant County Health Unit		64			0	0.0			0	0.0
Hastings & Prince Edward Counties Health Unit		22			0	0.0			0	0.0
Oxford County Board of Health		7			0	0.0			0	0.0
Windsor-Essex County Health Unit		18			0	0.0			0	0.0

Top Five Police Institutions *(based on numbers of requests completed)*

	Requests Received in 2001	Requests Completed in 2001	Within 1-30 days No. of Requests	%	Within 31-60 days No. of Requests	%	Within 61-90 days No. of Requests	%	More than 90 days No. of Requests	%
Durham Regional Police Service		492			86	17.5			0	0.0
Halton Regional Police Service		342			0	0.0			0	0.0
Hamilton Police Service		977			190	19.4			13	1.8
Niagara Regional Police Service		461			31	6.7			0	0.0
Toronto Police Service		2265			751	33.2			72	3.8

↑ up 5% or more from 2000
↑↑ up 15% or more from 2000
↓ down 5% or more from 2000
↓↓ down 15% or more from 2000

ACCESS

The concept of any individual being able to access government-held information is one of the fundamental principles of accountable government and participatory democracy.

This principle is reflected in the provincial and municipal *Acts*, which provide that, subject to limited and specific exemptions, information under the control of government organizations should be available to the public. Records that do not contain the personal information of the requester are referred to as "general records."

If you make a request for records to a provincial or municipal government organization under the *Acts*, and are not satisfied with the response, you can appeal the decision to the IPC. General records appeals can be filed concerning a refusal to provide access to general records, the amount of fees charged, the fact that the organization did not respond within the prescribed 30-day period, or other procedural aspects relating to a request. (Appeals relating to requests for access to one's own personal information are covered in this annual report in the chapter entitled *Privacy*.)

When an appeal is received, the IPC first attempts to settle it informally. If all issues cannot be resolved within a reasonable period of time, the IPC may conduct an inquiry and issue a binding order, which could include ordering the government organization to release all or part of the requested information.

BETTER UNDERSTANDING

One of the ongoing goals of the IPC's Tribunal Services Department is to ensure that appellants can easily understand the appeal process. In order to help accomplish this, our work in 2001 included:

- Publication of a revised Code of Procedure and Practice Directions for appeals under the *Acts*;
- Adding a Web-based interactive appeal process flow chart;
- Introducing an optional appeal form, which will assist the public when filing an appeal.

STATISTICAL OVERVIEW

In 2001, 950 appeals regarding access to general records and personal information were made to the IPC, an increase of 11 per cent over the number of appeals received in 2000. This increase did not create a backlog of appeals, as there was a corresponding increase in the number of appeals closed. The overall number of appeals closed in 2001 was 937, an increase of 10 per cent over 2000.

ACCESS TO GENERAL RECORDS

Appeals Opened

Overall, 650 appeals regarding access to general records were made to the IPC in 2001. Of these, 396 (61%) were filed under the provincial *Act* and 254 (39%) under the municipal *Act*.

Of the 396 provincial general records appeals received, 354 (89%) involved ministries and 42 (11%) involved agencies. The Ministry of Natural Resources was involved in the largest number of general records appeals (54). The Ministry of Health and Long-Term Care had the next highest number (50), followed by Environment (46), the Solicitor General (40) and the Attorney General (38). The agencies with the highest

number of general records appeals included the Ontario Realty Corporation (six), the Ontario Securities Commission (five), the Ontario Lottery and Gaming Corporation (four) and the Public Guardian and Trustee (four).

Of the 254 municipal general records appeals received, 158 (62%) involved police institutions, 61 (24%) involved municipal corporations, and 16 (six per cent) involved boards of education. An additional 19 appeals (seven per cent) involved other categories of municipal institutions.

In terms of the issues raised, 41 per cent of appeals were related to the exemptions claimed by institutions in refusing to grant access. An additional 13 per cent concerned exemptions as well as other issues. Seventeen per cent of appeals were the result of deemed refusals to provide access, in which the institution did not respond to the request within the timeframe required by the *Acts*. In about eight per cent of appeals, the issue was whether the institution had conducted a reasonable search for the records requested. The remaining appeals were related to fees, time extensions and other issues.

While the proportions of each issue in provincial and municipal appeals were similar, there were some differences. Specifically, while 61 per cent of municipal appeals were related to exemptions, or exemptions plus other issues, only 50 per cent of provincial appeals were related to these two categories. In addition, while 20 per cent of provincial appeals were the result of deemed refusals, only 13 per cent of municipal appeals were the result of this issue.

Provincial institutions with the largest number of deemed refusal appeals included Environment (24), Health and Long-Term Care (17), Natural Resources (nine) and the Solicitor General (five). Municipal institutions with the largest number of deemed refusal appeals included the Township of Stone Mills (10), the City of Hamilton (five), the District Municipality of Muskoka (five), and the City of Toronto (five).

Individual members of the public comprised the largest proportion of appellants (37%). Another large segment (34% of appellants) came from the business sector. Other appellants were categorized as media (15%), government (five per cent), politicians (four per cent), associations (three per cent), unions (one per cent), and academics/researchers (0.3%). In comparing provincial and municipal appeals, appellants under the provincial legislation were more likely to be from the government, politician or media categories, and appellants under the municipal legislation were more likely to be individuals or from the business sector.

Lawyers (117) and agents (nine) represented appellants in 19 per cent of the general records appeals.

In 2001, $12,212 in application fees for general records appeals was paid to the IPC.

Appeals Closed

The IPC closed 626 general records appeals during 2001. Of these, 379 (61%) concerned provincial institutions and 247 (39%) involved municipal institutions.

Seventy-four per cent of general records appeals were closed without the issuance of a formal order. Of the appeals closed by means other than order, one per cent were screened out, 63 per cent were successfully mediated, 32 per cent were withdrawn, three per cent were abandoned, and one per cent were dismissed without an inquiry. In comparing the outcomes of provincial and municipal appeals, provincial appeals were somewhat more likely to be successfully mediated than municipal appeals, and municipal appeals were somewhat more likely to be withdrawn than provincial appeals.

Of the 626 general records appeals closed in 2001, 19 per cent were closed during the intake stage, 53 per cent were closed during the mediation stage, and 28 per cent were closed during the adjudication stage.

Of the appeals closed during the intake stage, 95 per cent were withdrawn and five per cent screened out. Of those closed during the mediation stage, approximately 89 per cent were successfully mediated, six per cent were withdrawn, three per cent abandoned, and three per cent were closed by issuing a formal order. Of the appeals closed during the adjudication stage, 85 per cent were closed by issuing a formal order, 10 per cent were withdrawn, two per cent were abandoned, two per cent were dismissed without an inquiry, and one per cent were successfully mediated.

In 2001, 26 per cent of general records appeals were closed by issuing an order. The IPC issued a total of 147 final orders - 93 provincial and 54 municipal orders. In addition, the IPC issued 19 interim orders – 13 provincial and six municipal.

In the general records appeals resolved by order, the decision of the head was upheld in 38 per cent and partly upheld in 37 per cent of cases. The head's decision was not upheld in about 19 per cent of the appeals closed by order. Seven per cent of the orders issued in 2001 had other outcomes.

Issues in General Records Appeals

	Provincial	%	*Municipal*	%	*Total*	%
Exemptions	[redacted]	39.6	[redacted]	44.1	[redacted]	41.4
Exemptions with Other Issues	[redacted]	10.4	[redacted]	16.3	[redacted]	12.8
Deemed Refusal	[redacted]	20.3	[redacted]	13.8	[redacted]	17.4
Reasonable Search	[redacted]	8.6	[redacted]	6.3	[redacted]	7.7
Interim Decision	[redacted]	3.5	[redacted]	3.1	[redacted]	3.4
Third Party	[redacted]	7.8	[redacted]	1.6	[redacted]	5.4
Fees	[redacted]	1.0	[redacted]	2.0	[redacted]	1.4
Time Extension	[redacted]	.8	[redacted]	2.0	[redacted]	1.2
Inadequate Decision	[redacted]	.2	[redacted]	2.0	[redacted]	.9
Frivolous/Vexatious Request	[redacted]		[redacted]	3.9	[redacted]	1.5
Transfer	[redacted]	.3	[redacted]		[redacted]	.5
Other	[redacted]	7.1	[redacted]	5.5	[redacted]	6.4
Total	[redacted]	100.0	[redacted]	100.0	[redacted]	100.0

Types of Appellants

	Provincial	%	*Municipal*	%	*Total*	%
Academic/Researcher	[redacted]	0.3	[redacted]	0.4	[redacted]	0.3
Business	[redacted]	31.3	[redacted]	37.8	[redacted]	33.8
Government	[redacted]	7.80	[redacted]	1.6	[redacted]	5.4
Individual	[redacted]	31.8	[redacted]	46.0	[redacted]	37.4
Media	[redacted]	17.7	[redacted]	10.6	[redacted]	14.9
Association/Group	[redacted]	3.8	[redacted]	2.4	[redacted]	3.2
Politician	[redacted]	5.8	[redacted]		[redacted]	3.5
Union	[redacted]	1.5	[redacted]	1.2	[redacted]	1.4
Total	[redacted]	100.0	[redacted]	100.0	[redacted]	100.0

The number of appeals closed by order may not correspond to the number of orders issued, since one appeal may require more than one order, and one order may close more than one appeal.

Overall, the IPC issued a total of 224 final orders – 147 pertaining to access to general records and 77 pertaining to access to personal information. Also, the IPC issued 24 interim orders – 19 pertaining to access to general records and four pertaining to access to personal information.

Issues in General Records Appeals

	Provincial	*%*	*Municipal*	*%*	*Total*	
Exemptions	157	39.6	112	44.1	269	41.4
Exemptions with Other Issues	41	10.4	42	16.5	83	12.8
Deemed Refusal	80	20.2	33	13.0	113	17.4
Reasonable Search	34	8.6	16	6.3	50	7.7
Interim Decision	14	3.5	8	3.1	22	3.4
Third Party	31	7.8	4	1.6	35	5.4
Fees	4	1.0	5	2.0	9	1.4
Time Extension	3	.8	5	2.0	8	1.2
Inadequate Decision	1	.2	5	2.0	6	.9
Frivolous Vexatious Request			10	3.9	10	1.5
Transfer	3	.8			3	.5
Other	28	7.1	14	5.5	42	6.4
Total	**396**	**100.0**	**254**	**100.0**	**650**	**100.0**

Types of Appellants

	Provincial	*%*	*Municipal*	*%*	*Total*	
Academic Researcher	1	0.3	1	0.4	2	0.3
Business	124	31.3	96	37.8	220	33.8
Government	31	7.80	4	1.6	35	5.4
Individual	126	31.8	117	46.0	243	37.4
Media	70	17.7	27	10.6	97	14.9
Association Group	15	3.8	6	2.4	21	3.2
Politician	23	5.8			23	3.5
Union	6	1.5	3	1.2	9	1.4
Total	**396**	**100.0**	**254**	**100.0**	**650**	**100.0**

The number of appeals closed by order may not correspond to the number of orders issued, since one appeal may require more than one order, and one order may close more than one appeal.

Overall, the IPC issued a total of 224 final orders – 147 pertaining to access to general records and 77 pertaining to access to personal information. Also, the IPC issued 71 interim orders – 19 pertaining to access to general records and four pertaining to access to personal information.

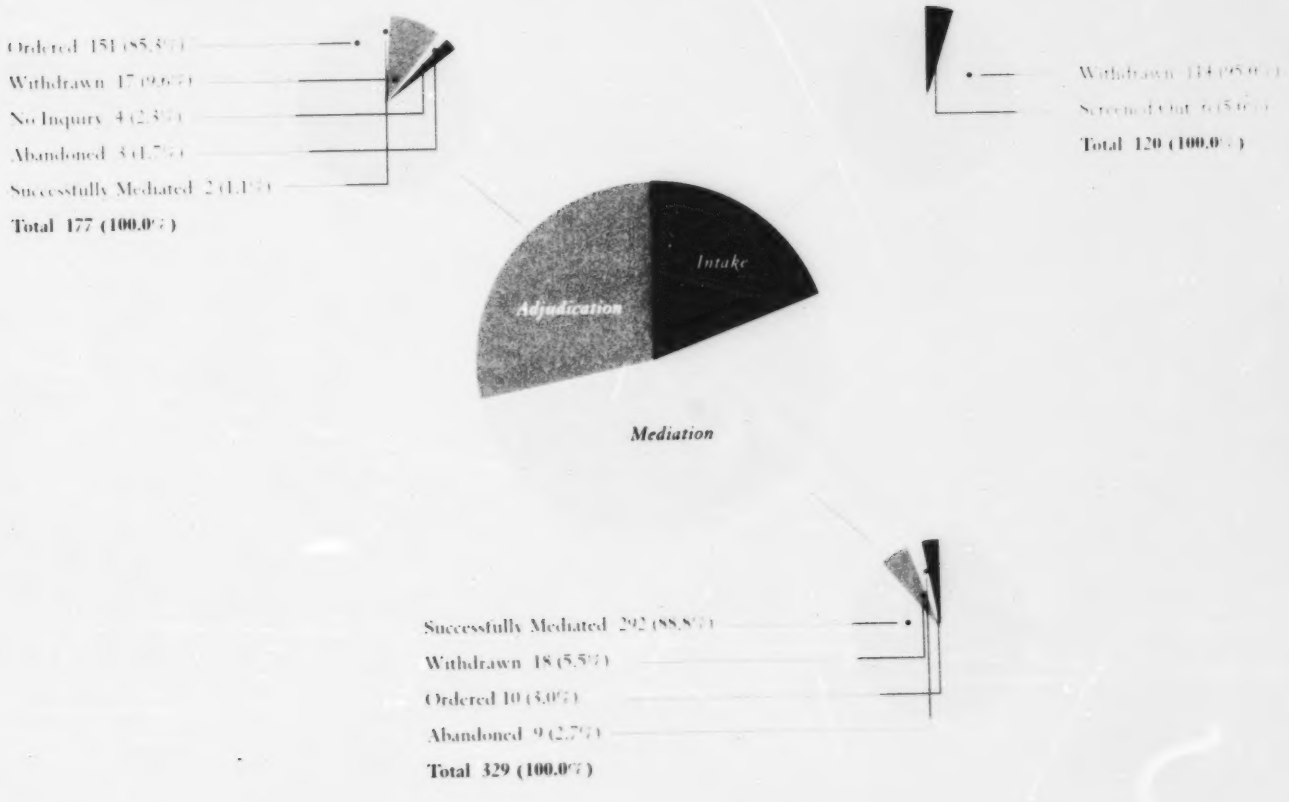
Outcome of Appeals Closed Other Than by Order

	Provincial	*%*	*Municipal*	*%*	*Total*	*%*
Screened Out	4	1.5	2	1.0	6	1.3
Successfully Mediated	177	65.1	117	60.6	294	63.2
Withdrawn	79	29.0	70	36.3	149	32.0
Abandoned	8	2.9	4	2.1	12	2.6
No Inquiry	4	1.5			4	0.9
Total	**272**	**100.0**	**193**	**100.0**	**465**	**100.0**

Outcome of Appeals Closed by Order

Head's Decision	*Provincial*	*%*	*Municipal*	*%*	*Total*	*%*
Upheld	41	38.3	20	37.0	61	37.9
Partly Upheld	41	38.3	18	33.3	59	36.6
Not Upheld	20	18.7	10	18.5	30	18.6
Other	5	4.7	6	11.1	11	6.8
Total	**107**	**100.0**	**54**	**100.0**	**161**	**100.0**

Outcome of Appeals by Stage Closed



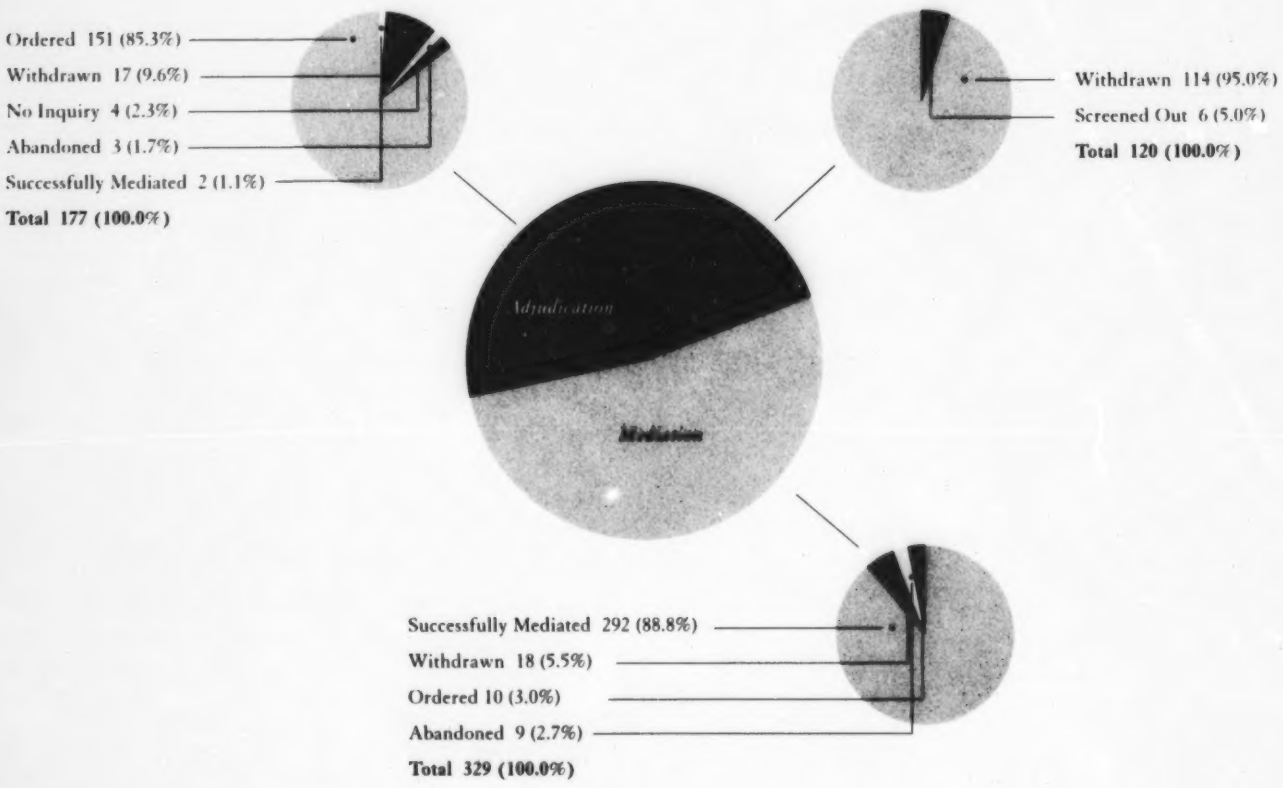
Outcome of Appeals Closed Other Than by Order

	Provincial	%	*Municipal*	%	*Total*	%
Screened Out		1.5		1.0		1.3
Successfully Mediated		65.1		60.6		63.2
Withdrawn		29.0		36.3		32.0
Abandoned		2.9		2.1		2.6
No Inquiry		1.5				0.9
Total		**100.0**		**100.0**		**100.0**

Outcome of Appeals Closed by Order

Head's Decision	*Provincial*	%	*Municipal*	%	*Total*	%
Upheld		38.3		37.0		37.9
Partly Upheld		38.3		33.3		36.6
Not Upheld		18.7		18.5		18.6
Other		4.7		11.1		6.8
Total		**100.0**		**100.0**		**100.0**

Outcome of Appeals by Stage Closed



PRIVACY

COMPLAINTS

To protect personal privacy, the provincial and municipal *Acts* establish rules that govern the collection, retention, use, disclosure, security, and disposal of personal information held by government organizations.

If you believe a provincial or municipal government organization has failed to comply with one of the *Acts* and that your privacy has been compromised as a result, you can file a complaint with the Information and Privacy Commission. The IPC will look into the complaint. In many cases, we attempt to mediate a solution. The IPC may make formal recommendations to a government organization to amend its practices.

PROCESS CHANGES EFFECTIVE

In October 2000, the IPC's Tribunal Services Department implemented a new process for privacy complaints. As a result, the privacy complaint process improved significantly and measurably during 2001. The following sets out some of the highlights:

- The introduction of an expanded Registrar role and intake function meant that more than half of all complaints resolved in 2001 were resolved in the intake stage;
- Almost one-third of all complaints resolved in 2001 were resolved in the new intake resolution stream, rather than going through the more formal investigation stream;
- The addition of a Web-based interactive privacy complaint process flow chart;
- The introduction of an optional privacy complaint form, which will assist the public when filing a privacy complaint.

PROBING PRIVACY COMPLAINTS

Ninety-six privacy complaints were opened in 2001. Fifty-five complaints (57%) were filed under the provincial *Act* and 36 complaints (38%) were filed under the municipal *Act*. Five additional non-jurisdictional complaints were filed in 2001. Overall, there were 23 per cent more privacy complaints than in 2000.

The IPC closed 95 privacy complaints in 2001. These complaints involved 102 issues. The disclosure of personal information was the most frequent issue, raised in 74 per cent of complaints. The collection of personal information was an issue in 21 per cent, while the use of personal information was an issue in seven per cent of complaints. Five per cent of the complaints involved other issues, including notice of collection, access and general privacy issues.

While processing privacy complaints, the IPC continues to emphasize informal resolution. Consistent with this approach, the majority of complaints – 76 per cent – were closed without the issuance of a privacy complaint report.

About 53 per cent of complaints were closed during the intake stage. Of those closed during intake, six per cent were screened out, 36 per cent were withdrawn, and 58 per cent were resolved informally.

Forty-seven per cent of complaints proceeded to the investigation stage. Of the complaints closed during this stage, two per cent were abandoned, four per cent were withdrawn, 42 per cent were settled, and 51 per cent were closed by issuing a report. Twenty-three privacy complaint reports were issued in 2001. These reports contained 30 recommendations to government organizations.

Summary of Privacy Complaints - 2001

	2000 Privacy Complaints				2001 Privacy Complaints			
	Provincial	*Municipal*	*Non-jurisdictional*	*Total*	*Provincial*	*Municipal*	*Non-jurisdictional*	*Total*
Opened	[redacted]	31	[redacted]	78	[redacted]	36	[redacted]	96
Closed	[redacted]	41	[redacted]	82	[redacted]	28	[redacted]	95

Privacy Complaints by Type of Resolution

	Provincial	*Municipal*	*Non-jurisdictional*	*Total*
Screened out	[redacted]	1	[redacted]	3
Abandoned	[redacted]	1	[redacted]	1
Withdrawn	[redacted]	6	[redacted]	20
Settled	[redacted]	5	[redacted]	19
Informal Resolution	[redacted]	11	[redacted]	29
Report	[redacted]	4	[redacted]	23
Total	[redacted]	28	[redacted]	95

Issues* in Privacy Complaints

	Provincial	*Municipal*	*Non-jurisdictional*	*Total*
Disclosure	[redacted]	22	[redacted]	70
Collection	[redacted]	6	[redacted]	20
Notice of Collection	[redacted]		[redacted]	1
Use	[redacted]	2	[redacted]	7
Access	[redacted]		[redacted]	1
General Privacy	[redacted]	1	[redacted]	3
Total	[redacted]	31	[redacted]	102

** The number of issues does not equal the number of complaints, as some complaints may involve more than one issue.*

Privacy Complaints by Type of Resolution and Stage Closed

	Intake	*Investigation*	*Total*
Screened out	[redacted]		[redacted]
Abandoned	[redacted]	1	[redacted]
Withdrawn	[redacted]	2	[redacted]
Settled	[redacted]	19	[redacted]
Informal Resolution	[redacted]		[redacted]
Report	[redacted]	23	[redacted]
Total	[redacted]	45	[redacted]

Outcome of Issues* in Privacy Complaints

	Provincial	*Municipal*	*Non-jurisdictional*	*Total*
Did not comply with the *Act*	[redacted]	1	[redacted]	14
Complied with the *Act*	[redacted]	3	[redacted]	7
Partially complied	[redacted]		[redacted]	1
Act does not apply	[redacted]	3	[redacted]	11
Not personal information	[redacted]		[redacted]	1
Resolved – Finding not necessary	[redacted]	23	[redacted]	64
Unable to conclude	[redacted]	1	[redacted]	4
Total	[redacted]	31	[redacted]	102

** The number of issues does not equal the number of complaints, as some complaints may involve more than one issue.*

Source of Complainants

	Provincial	*Municipal*	*Non-jurisdictional*	*Total*
Individual	[redacted]	28	[redacted]	84
IPC Commissioner Initiated	[redacted]		[redacted]	11
Total	[redacted]	28	[redacted]	95

Number of Privacy Complaints Closed 1998-2001

	Provincial	*Municipal*	*Non-jurisdictional*	*Total*
1998	[redacted]	54	[redacted]	96
1999	[redacted]	48	[redacted]	88
2000	[redacted]	41	[redacted]	82
2001	[redacted]	28	[redacted]	95

Summary of Privacy Complaints - 2001

	2000 Privacy Complaints				2001 Privacy Complaints			
	Provincial	*Municipal*	*Non-jurisdictional*	*Total*	*Provincial*	*Municipal*	*Non-jurisdictional*	*Total*
Opened	44	31	3	78	55	36	5	96
Closed	39	41	2	82	61	28	6	95

Privacy Complaints by Type of Resolution

	Provincial	*Municipal*	*Non-jurisdictional*	*Total*
Screened out		1	2	3
Abandoned		1		1
Withdrawn	11	6	3	20
Settled	14	5		19
Informal Resolution	17	11	1	29
Report	19	4		23
Total	**61**	**28**	**6**	**95**

Issues* in Privacy Complaints

	Provincial	*Municipal*	*Non-jurisdictional*	*Total*
Disclosure	45	22	3	70
Collection	12	6	2	20
Notice of Collection	1			1
Use	5	2		7
Access			1	1
General Privacy	2	1		3
Total	**65**	**31**	**6**	**102**

** The number of issues does not equal the number of complaints, as some complaints may involve more than one issue.*

Privacy Complaints by Type of Resolution and Stage Closed

	Intake	*Investigation*	*Total*
Screened out	3		3
Abandoned		1	1
Withdrawn	18	2	20
Settled		19	19
Informal Resolution	29		29
Report		23	23
Total	**50**	**45**	**95**

Outcome of Issues* in Privacy Complaints

	Provincial	*Municipal*	*Non jurisdictional*	*Total*
Did not comply with the *Act*	13	1		14
Complied with the *Act*	4	3		7
Partially complied	1			1
Act does not apply	2	3	6	11
Not personal information	1			1
Resolved – Finding not necessary	41	23		64
Unable to conclude	3	1		4
Total	**65**	**31**	**6**	**102**

** The number of issues does not equal the number of complaints, as some complaints may involve more than one issue.*

Source of Complainants

	Provincial	*Municipal*	*Non jurisdictional*	*Total*
Individual	50	28	6	84
IPC Commissioner Initiated	11			11
Total	**61**	**28**	**6**	**95**

Number of Privacy Complaints Closed 1998-2001

	Provincial	*Municipal*	*Non jurisdictional*	*Total*
1998	42	54		96
1999	40	48		88
2000	39	41	2	82
2001	61	28	6	95

Sixty-three per cent of the issues raised in the privacy complaints were resolved without the need for a finding. Institutions were found to have complied with the *Acts* with respect to seven per cent and partially complied with respect to one per cent of the issues. Institutions were found not to have complied with *Acts* with respect to 14 per cent of the issues. In 11 per cent of the issues, the *Acts* were found not to apply. No conclusion was reached with respect to four per cent of the issues. And one per cent of the issues were found not to involve personal information.

Of the 95 complaints closed in 2001, 88 per cent were initiated by members of the public and 12 per cent were initiated by the Commissioner.

PERSONAL INFORMATION APPEALS

The *Acts* also provide a right of access to and correction of your personal information.

If you make a request for your personal information to a provincial or municipal government organization under the *Acts*, and are not satisfied with the response, you can appeal the decision to the IPC. Personal information appeals can be filed concerning a refusal to provide access to your personal information, a refusal to correct your personal information, the amount of fees charged, the fact that the organization did not respond within the prescribed 30-day period, or other procedural aspects relating to a request. (Appeals relating to requests for access to general records are covered in the chapter entitled *Access*.)

When an appeal is received, the IPC first attempts to settle it informally. If all the issues cannot be resolved within a reasonable period of time, the IPC may conduct an inquiry and issue a binding order, which could include ordering the government organization to release all or part of the requested information.

STATISTICAL OVERVIEW

In 2001, 950 appeals regarding access to general records and personal information were made to the IPC, an increase of 11 per cent over the number of appeals received in 2000. This increase did not create a backlog of appeals, as there was a corresponding increase in the number of appeals closed. The overall number of appeals closed in 2001 was 937, an increase of 10 per cent over the number of appeals closed in 2000.

ACCESS AND CORRECTION OF ONE'S PERSONAL INFORMATION

Appeals Opened

Overall, 300 appeals regarding access or correction of one's personal information were made to the IPC in 2001. Of these, 111 (37%) were filed under the provincial *Act* and 188 (62%) were filed under the municipal *Act*. One additional non-jurisdictional personal information appeal was made in 2001.

Of the 111 provincial personal information appeals received, 90 (81%) involved ministries and 21 (19%) involved agencies. The Solicitor General was involved in the largest number of personal information appeals (50). Correctional Services had the next highest number of personal information appeals (13), followed by Community and Social Services (nine), Health and Long-term Care (seven) and the Attorney General (four). The agencies with the highest number of personal information appeals included the Ontario Human Rights Commission (seven), the Ontario Civilian Commission on Police Services (six), and the Workplace Safety and Insurance Board (three).

Of the 188 municipal personal information appeals received, 125 (67%) involved police institutions, 43 (23%) involved municipal corporations, and 14 (seven per cent) involved boards of education. An additional six (three per cent) appeals involved other categories of municipal institutions.

Forty-eight per cent of personal information appeals were related to the exemptions claimed by institutions in refusing to grant access. An additional 12 per cent concerned exemptions as well as other issues. Ten per cent of personal information appeals were the result of deemed refusals to provide access, in which the institution did not respond to the request within the time frame required by the *Acts*. In about 13 per cent of appeals, the issue was whether the institution had conducted a reasonable search for the records requested. Three per cent of appeals related to correction requests. The remaining appeals were related to fees, time extensions and various other issues.

In comparing municipal and provincial appeals, reasonable search and deemed refusals were more likely to be issues in provincial appeals. Correction of personal information was more likely to be an issue in municipal appeals than in provincial appeals. In addition, municipal personal information appeals generally raised a broader range of issues than did provincial personal information appeals (e.g., frivolous or vexatious requests, fees, and time extensions).

The number of deemed refusal appeals pertaining to personal information was much lower than the number of deemed refusal appeals pertaining to general records. No provincial or municipal institution had more than three deemed refusal appeals pertaining to personal information.

Lawyers (81) or agents (four) represented appellants in 28 per cent of the personal information appeals.

In 2001, the IPC collected $2,251 in application fees for personal information appeals.

Appeals Closed

The IPC closed 310 personal information appeals during 2001. Of these, 119 personal information appeals closed this year concerned provincial institutions, while 190 (61%) involved municipal institutions. One additional non-jurisdictional personal information appeal was closed in 2001.

Seventy-six per cent of personal information appeals were closed without the issuance of a formal order. Of the appeals closed by means other than order, five per cent were screened out, 53 per cent were successfully mediated, 37 per cent were withdrawn, three per cent were abandoned, and one per cent were dismissed without an inquiry.

Of the 310 personal information appeals closed in 2001, 25 per cent were closed during the intake stage, 47 per cent were closed during the mediation stage, and 27 per cent were closed during the adjudication stage.

Of the appeals closed during the intake stage, 82 per cent were withdrawn, 15 per cent were screened out and three per cent were abandoned. Of the appeals closed during the mediation stage, 85 per cent were successfully mediated, 10 per cent were withdrawn, three per cent were abandoned, and one per cent were closed by issuing a formal order. Of the appeals closed during the adjudication stage, 85 per cent were closed by issuing a formal order, 10 per cent were withdrawn, three per cent were dismissed without an inquiry, and one per cent were abandoned.

In 2001, 24 per cent of personal information appeals were closed by issuing an order. The IPC issued a total of 77 final orders for personal information appeals – 25 provincial and 52 municipal.[1] In addition, the IPC issued four interim orders – two provincial and two municipal.

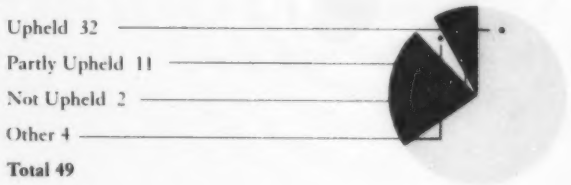
In appeals resolved by order, the decision of the head was upheld in 59 per cent and partly upheld in 28 per cent of cases. The head's decision was not upheld in only approximately five per cent of the appeals closed by order. Seven per cent of the orders issued in 2001 had other outcomes. In comparing the outcomes of provincial and municipal orders, the decision of the head was more likely to be upheld in municipal orders, and more likely to be partly upheld in provincial orders. The head's decision was not upheld in twice as many provincial orders as compared to municipal orders, and there were twice as many municipal orders with outcomes other than a head's decision being upheld, partly upheld or not upheld.

[1] *The number of appeals closed by order may not correspond to the number of orders issued, since one appeal may require more than one order, and one order may close more than one appeal.*

Outcome of Appeals Closed by Order

Municipal

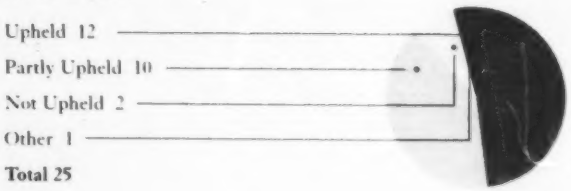
Head's Decision



Total 49

Provincial

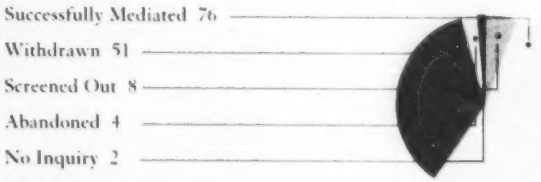
Head's Decision



Total 25

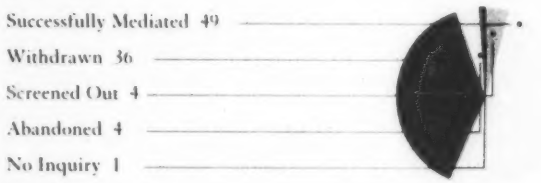
Outcome of Appeals Closed Other Than by Order

Municipal



Total 141

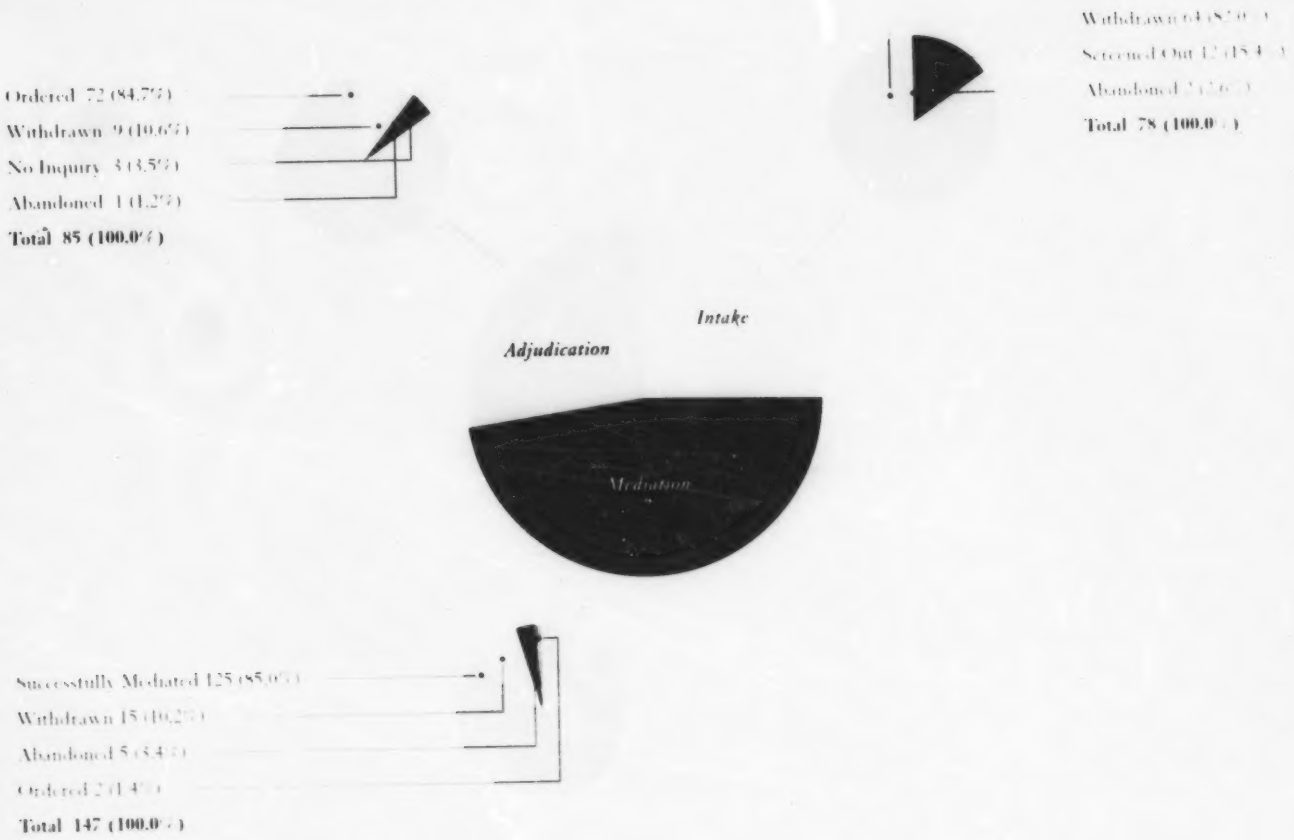
Provincial



Total 94

*One additional non-jurisdictional appeal was withdrawn in 2001

Outcome of Appeals by Stage Closed

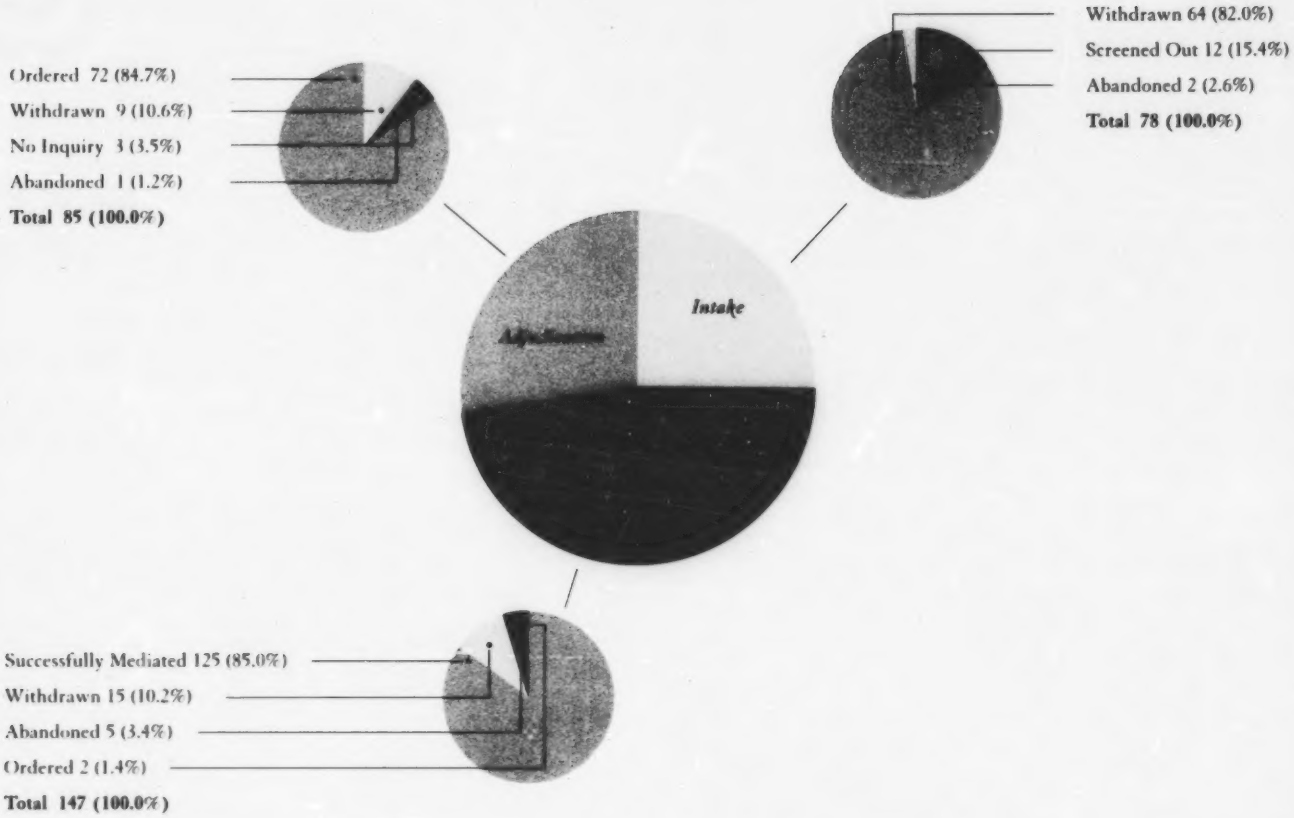


Issues in Personal Information Appeals

	Provincial	%	Municipal	%	Total	%
Exemptions	55	49.6	90	47.9	145	48.3
Exemptions with Other Issues	10	9.0	25	13.3	35	11.7
Deemed Refusal	14	12.6	16	8.5	30	10.0
Reasonable Search	19	17.1	20	10.6	39	13.0
Interim Decision	1	0.9			1	0.3
Third Party			1	0.5	1	0.3
Fees			3	1.6	3	1.0
Time Extension			2	1.1	2	0.7
Inadequate Decision	1	0.9	2	1.1	3	1.0
Frivolous Vexatious Request			3	1.6	3	1.0
Transfer			1	0.5	1	0.3
Correction	2	1.8	8	4.3	10	3.3
Other	9	8.1	17	9.0	26	9.0
Total	**111**	**100.0**	**188**	**100.0**	**299***	**100.0**

** One additional non-jurisdictional personal information appeal was filed in 2001.*

Outcome of Appeals by Stage Closed



Issues in Personal Information Appeals

	Provincial	%	*Municipal*	%	*Total*	%
Exemptions						
Exemptions with Other Issues						
Deemed Refusal						
Reasonable Search						
Interim Decision						
Third Party						
Fees						
Time Extension						
Inadequate Decision						
Frivolous/Vexatious Request						
Transfer						
Correction						
Other						
Total						

** One additional non-jurisdictional personal information appeal was filed in 2001.*

JUDICIAL REVIEWS

2001 saw several important decisions of the courts that both upheld and reversed IPC orders. Four of these decisions are the subject of applications for leave to appeal to higher courts, so that the issues dealt with here may not be finally resolved. Other decisions reaffirmed fundamental principles of access and privacy rights involving personal information and general records.

In last year's annual report, we noted that Ontario's Court of Appeal had recently heard three government appeals from Divisional Court rulings upholding the IPC's interpretation of exclusions for labour relations and employment records. In August 2001, the Court of Appeal released its judgment reversing the Divisional Court and overturning the IPC's rulings. Records that the IPC had found were subject to the provincial *Act*, the Court of Appeal found to be excluded. In a single ruling encompassing all three appeals, the Court rejected the IPC's requirement that government show a "current legal interest" in the subject matter of a record in order for the exclusions to apply.

The IPC had reasoned that unless government had a current interest in a labour or employment matter that could affect its legal rights or obligations, and thus upset the balance in its labour and employee relations, the underlying purpose for excluding records did not exist. In the IPC's view, records about past matters which had long since concluded, or could not otherwise affect government's legitimate interests, should be subject to the normal access and privacy rules established under the *Act* by the exemptions.

The Court of Appeal rejected this approach. In its view, the words "in which an institution has an interest" simply refer to matters involving government's own work force. The Court also held that IPC decisions concerning the exclusions are not entitled to deference because they affect the IPC's jurisdiction under the *Act*. Accordingly, it was not obliged to defer to the IPC's interpretation even though it may have been "reasonable." The IPC has brought an application to the Supreme Court of Canada seeking leave to appeal from the Court of Appeal's decision, in light of the potential for erosion of access and privacy rights that may not be justified given the purpose and wording of the exclusions.

The IPC also saw its traditional "reasonableness" standard of review eroded in a case within its jurisdiction involving a claim of solicitor-client privilege under section 19 of the *Act*. The IPC held that records prepared by or for Crown counsel in connection with criminal charges and a trial were protected to the same extent as records prepared in private litigation by or for non-government lawyers. Applying common law principles of "litigation privilege," the IPC held that the records sought would have been exempt as long as the prosecution was ongoing, but that the privilege ended on completion of the litigation. Most of the records at issue contained personal information and were subject to the personal privacy exemption at section 21 of the *Act* in any event. However, the Commissioner ordered disclosure of the remaining records, which did not contain personal information.

The Divisional Court overturned this decision because it did not agree that the common law rules should apply to Crown counsel records. The Court found fault in the IPC's decision to consider statements by the former Attorney General who introduced the legislation, as reported in Hansard, which supported the IPC's interpretation. The Court also held that the IPC's decision should be reviewed on a "correctness" and not a "reasonableness" standard of review because common law solicitor-client privilege did not engage the IPC's specialized expertise. However, the Court did not take issue with the IPC's statement of the common law rules, disagreeing only with the IPC's interpretation that these rules should apply to government Crown counsel.

The Divisional Court's ruling is in apparent conflict with rulings of the Court of Appeal that IPC decisions interpreting and applying the exemptions under the *Act* are subject to review on a reasonableness standard, and are entitled to the court's deference. By failing to give effect to the legislative history, the Divisional Court's ruling affords Crown counsel a privilege "more expansive and durable" than in any other solicitor-client context. Because this outcome may tend to undermine bureaucratic accountability in the conduct of government litigation, the IPC is seeking leave to appeal this decision to the Court of Appeal for Ontario.

Provincial institutions are also seeking to challenge two Divisional Court rulings in 2001 that upheld IPC orders on a reasonableness standard of review. In one case involving the Ministry of Health and Long -Term Care, the IPC found that records listing the top 10 items billed by an unnamed physician did not contain personal information and must be disclosed. In another case, the IPC ordered Ontario's Public Guardian and Trustee to disclose a listing of individuals who had died intestate, including their names, addresses, dates and places of death, and last occupations. In this case, the IPC found that disclosure would not cause pecuniary harm to affected persons, but would, in fact, benefit unknown heirs by making additional resources available to locate and assist them in claiming their inheritances. Accordingly, disclosure was not an unjustified invasion of the privacy of the deceased individuals.

Two other decisions of the Divisional Court involving personal information are also worthy of note. In one case, the Divisional Court upheld as reasonable the IPC's decision ordering the Ontario Lottery and Gaming Corporation (OLGC) to disclose the salary ranges of its employees. In that case, section 21(4)(b) of the *Act* provided that disclosure of such information was not an unjustified invasion of privacy. The Court agreed with the IPC that its previous decision in another judicial review application was dispositive of the issues raised by the OLGC. In another case, the Court upheld the Commissioner's ruling that the Ministry of the Environment was bound by the mandatory exemption at section 21 to refuse to disclose the name of an environmental whistle blower to the person who was allegedly in breach of environmental regulations. Each of these cases involved issues that had previously been decided in the courts. Accordingly, the applicants were ordered by the Court to pay the IPC its costs as a deterrent to unnecessary litigation.

Outstanding Judicial Reviews as of December 31, 2001: 36[1]

Launched by:

Institutions: 28

Requesters: 8

Affected Parties: 0

New applications received in 2001: 15

Judicial Reviews Closed/Heard in 2001: 13

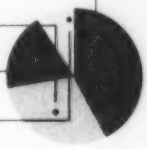
Heard but Not Closed (subject to appeal): 7

Abandoned (IPC order stands): 3[2]

IPC Order Upheld: 2[3]

Dismissed for Delay: 1[4]

IPC Orders Not Upheld: 0



[1] Includes 13 judicial reviews on hold pending other court rulings
[2] Abandoned: IPC order stands: MO-1213, MO-1251, PO-1805
[3] Orders upheld: PO-1706, PO-1763
[4] Dismissed for Delay (IPC order stands): P1-609/R-980030

INFORMATION ABOUT THE IPC

OUTREACH PROGRAM

One of the IPC's key responsibilities is to help educate Ontarians about their access and privacy rights. To help address this mandate, the IPC – for the fourth consecutive year – expanded its *Outreach* program in 2001.

The *Outreach* program has five core elements:

- **School program**
- **Speeches and presentations**
- **IPC publications**
- **Media relations**
- **Web site**

SCHOOL PROGRAM

The IPC launched the third phase of its school program in 2001, a guide for Grade 11 and 12 teachers, *What Students Need to Know About Freedom of Information and Protection of Privacy.* The latest guide, primarily aimed at Grade 11 and 12 law teachers, is the third produced by the IPC. The other two are guides for Grade 5 social studies teachers (the level where students first study government) and Grade 10 civics teachers (the civics curriculum includes freedom of information and privacy).

During 2001, nearly 5,000 copies of the IPC's teacher's kits and brochures were downloaded from the educational resources section of the IPC's Web site.

To help promote the guides, the IPC made presentations to history and social studies consultants at five school boards during 2001, and also made copies of the newest guide available at a secondary school teachers' conference. In addition, IPC staff made more than 50 presentations to Grade 5 social studies classes as part of our *Ask an Expert* program.

All three guides – and brochures outlining each of them – are available on the IPC's Web site:
www.ipc.on.ca/english/resources/resources.htm.

SPEECHES AND PRESENTATIONS

Commissioner Cavoukian was a keynote speaker at a number of major conferences in 2001 and also made special presentations at universities and to various groups. Among these were a presentation to senior government officials at the *Values and Ethics of Privacy* conference in Ottawa, which was organized by the Conference Board of Canada; the *Privacy Summit* organized by IBM and Tivoli in Toronto; an *e-Government in Ontario* conference, and *The Human Face of Privacy Technology* conference, which was sponsored by the IPC and the University of Waterloo. Among others, she also made presentations to the Centre for Foreign Policy Development; the Ontario Bar Association; the Ontario Hospital Association; the Public Affairs Association of Canada; the Association of Municipalities of Ontario, and to faculty and students at the University of Toronto, University of Ottawa and Carlton University.

Other segments of the IPC's speakers' program include:

- the *Reaching out to Ontario* program, under which a team of speakers – led by the Commissioner or the Assistant Commissioner – visit a region of Ontario and make presentations to various groups. In 2001, IPC teams visited Ottawa, the Niagara Region, Sudbury and Kitchener -Waterloo.
- an expanded media program, under which the IPC's communications co-ordinator addresses college and university journalism or electronic media classes, and workshops at newspapers and other media.

- a university program, where senior members of the IPC's Policy and Legal Departments make presentations to faculty and students in business, technology and law programs.
- a general public speaking program, where IPC staff make presentations on access and privacy to various groups or organizations. Presentations in 2001 included two at specially arranged professional development seminars (one in central Ontario; one in western Ontario) for senior librarians.

IPC PUBLICATIONS

The IPC released 17 publications or submissions in 2001, including a *Privacy Diagnostic Tool* (PDT) workbook. The PDT is a self-assessment tool that the IPC created with the assistance of Guardent and PricewaterhouseCoopers. It helps businesses gauge their privacy readiness by comparing their information processes with international privacy guidelines. (Free copies of the PDT are also available in three different software formats on the IPC's Web site.)

Other 2001 publications include *Guidelines for Using Video Surveillance Cameras in Public Places*, and *If you wanted to know... How to access your personal information held by the province,* which explains where to find and how to use the *Directory of Records* and the *Directory of Institutions*.

A full list of all IPC publications released in 2001 follows this *Outreach* report.

MEDIA RELATIONS

As media reports are one of the ways that many Ontario residents learn about specific access and privacy issues, the IPC has both pro-active and responsive media relations programs.

The Commissioner is the official spokesperson for the IPC and accepts as many media requests for interviews as her schedule allows. During 2001, the Commissioner gave 85 interviews – to Ontario, Canadian and international newspaper, magazine, TV, and radio reporters. In addition, as part of the IPC's efforts to focus attention on freedom of information and privacy issues, the Commissioner or Assistant Commissioner met with the editorial boards of five Ontario newspapers in 2001.

IPC WEB SITE

Another key element of the Outreach program is the IPC's Web site, which contains an extensive amount of information about access and privacy issues and legislation. As well as all IPC publications and orders, there are copies of the two *Acts*, educational material, common questions and answers about access and privacy, press releases, selected speeches and other presentations, and a section – *How Things Work* – that is designed to help the public understand how things work at the IPC, such as what happens when the IPC receives a privacy complaint, or what the IPC's approach is to mediating appeals. Among the many other sections is one where you can find links to other Web sites that focus on access and/or privacy.

For more detailed information about the Web site (**www.ipc.on.ca**), see the chapter that follows *Publications*.

PUBLICATIONS

The IPC's publications program is one of the cornerstones of its *Outreach* program. As well as its annual report and two newsletters, the IPC – each year – produces a number of policy papers, brochures and specialty publications.

The publications and major submissions released in 2001, in order of publication, were:

- *F.A.Q.: Frequently Asked Questions: Access and Privacy in the School System*, jointly produced by the IPC and the Toronto District School Board as a resource for parents, teachers and administrators.
- *Police Officers' Notebooks and the Municipal Freedom of Information and Protection of Privacy Act: A Guide for Police Officers*, jointly produced by the IPC and Durham Regional Police. It was prepared to help clarify the treatment of police officers' notebooks under the *Act*, and to facilitate the processing of access requests that involve this type of record.
- *Submission and Speaking Notes for presentation to the Standing Committee on General Government reviewing Bill 159, the Personal Health Information Privacy Act, 2000.*
- *Second Presentation to the Standing Committee on General Government: Bill 159: Personal Health Information Privacy Act, 2000.* This document reinforces the main points from the IPC's first submission and responds to some of the comments made by other stakeholders.
- A submission in response to the federal *Access to Information Review Task Force's* consultation paper.
- *Best Practices for Online Privacy Protection* is an educative tool designed to help companies identify and implement appropriate practices for protecting the privacy of their online customers.
- Spring 2001 edition of the IPC's bi-annual newsletter, *Perspectives.*
- Commissioner Ann Cavoukian's annual report for 2000.
- *Guidelines for Protecting the Privacy and Confidentiality of Personal Information When Working Outside the Office* provides best practices and tips to assist government organizations in developing policies that address the privacy obligations of employees who are working in locations outside the traditional office setting.
- *Privacy Diagnostic Tool* – a self-assessment program used to help businesses gauge their privacy readiness by comparing their information processes with international privacy principles. It was developed by the IPC with the assistance of Guardent and PricewaterhouseCoopers.
- *An Internet Privacy Primer: Assume Nothing* is a collaboration by the IPC and Microsoft Canada that outlines the risks individuals should be aware of when using the Internet.
- A Grade 11/12 teacher's guide, *What Students Need to Know about Freedom of Information and Protection of Privacy*, the third teacher's guide produced by the IPC as part of its school program.
- *Guidelines for Using Video Surveillance Cameras in Public Places* are guidelines to assist institutions in deciding whether the collection of personal information by means of a video surveillance system is lawful and justifiable as a policy choice, and – if so – how privacy protective measures can be built into the system.
- *If you wanted to know... How to access your personal information held by the province* explains where to find and how to use the *Directory of Records* and *Directory of Institutions.*
- *Working with the Municipal Freedom of Information and Protection of Privacy Act: A Councillor's Guide*, jointly produced by the IPC and the City of Ottawa, focuses on how the *Act* applies to both records requested by, and in the possession of, elected members of council.
- Fall 2001 edition of *Perspectives.*
- *Backgrounder for Senior Managers and Information and Privacy Co-ordinators: Raising the profile of access and privacy in your institution.* Each provincial and municipal government organization has a co-ordinator. This backgrounder, jointly produced by the IPC and the Ministry of Natural Resources, looks at ways co-ordinators can help others integrate an awareness and understanding of access and privacy into their daily work.

All IPC publications are available on the IPC's Web site, **www.ipc.on.ca**, or by calling the Communications Department at 416-326-3333 or 1-800-387-0073 to request copies of specific publications.

IPC WEB SITE

The IPC continues to expand and enhance its Web site, **www.ipc.on.ca**, one of its key educational tools.

Among the enhancements to the site in 2001, the scope of the Educational Resources section was broadened and renamed *Resources*. The educational resources portion of this section has been expanded with the addition of a new teacher's guide – for Grade 11 and 12 teachers – and an updated guide for Grade 10 civics teachers. Another addition is a new paper, *F.A.Q.: Frequently Asked Questions: Access and Privacy in the School System*.

The other major section of *Resources* is devoted to the *Privacy Diagnostic Tool (PDT)*. Developed by the IPC with the assistance of security and privacy experts at Guardent and PricewaterhouseCoopers, this free self-assessment tool can be used to compare an organization's business information processes against international privacy principles, known as fair information practices. In addition to a print version, electronic versions of the PDT are available in three different software formats.

Other changes to the Web site in 2001 include the addition of new charts and forms to assist the public.

The IPC's Tribunal Services Department created electronic procedure charts, which can be found in the *How Things Work* segment of the *Our Role* section. These "plain language" visual interpretations use diagrams to outline the steps involved in the appeal and privacy complaint processes and provide definitions of common appeal and complaint process terminology.

Complementing these charts are newly created appeal and privacy complaint forms, in the *Forms* section of the Web site. The appeal form can be used for filing an appeal to the IPC against a decision made by a government organization relating to a request made under the provincial or municipal *Acts*. The complaint form can be used for filing a privacy complaint with the IPC if you believe a provincial or municipal government organization has improperly collected, used or disclosed your personal information.

WEB INFORMATION RESOURCES

Each year, thousands of copies of IPC publications, forms and other materials are downloaded from or referenced on the Web site. In 2001, almost 38,000 .pdf versions were downloaded.

Consistent with the IPC's mandate to promote routine disclosure, all IPC orders are posted to the Web site. They are accessed not only by those members of the public who are involved in appeals themselves, and by the legal profession and government organizations, but have proven to be a solid point of reference to the media, and those who wish to gain an overview of a particular issue or the appeal process. In 2001, the orders section was accessed more than 90,000 times.

Among the IPC's most popular publications are the three teacher's guides and related brochures. Nearly 5,000 copies of these educational resources were downloaded in 2001.

Another popular resource is the *Privacy Diagnostic Tool*. In less than half a year (it was released last August), more than 4,200 copies were downloaded.

The IPC's annual reports are also frequently accessed or downloaded. The 2000 annual report was accessed thousands of times and about 1,400 copies were downloaded in 2001 (it was released last June). In addition, nearly 1,000 copies of the 1999 report were downloaded last year (primarily during the first half of the year, before the 2000 report was released).

The IPC is constantly updating and improving the resources available on its Web site. Questions and feedback are always welcome. Please address comments to: **info@ipc.on.ca**.

MONITORING LEGISLATION AND PROGRAMS

Part of the mandate of the IPC under the *Freedom of Information and Protection of Privacy Act* is to offer comment on the privacy protection and access implications of proposed government legislative schemes or government programs. We take this mandate very seriously and were pleased with the extent to which ministries sought our advice during 2001. The following list provides an overview of the work done by the IPC during 2001 that focused on provincial government activities.

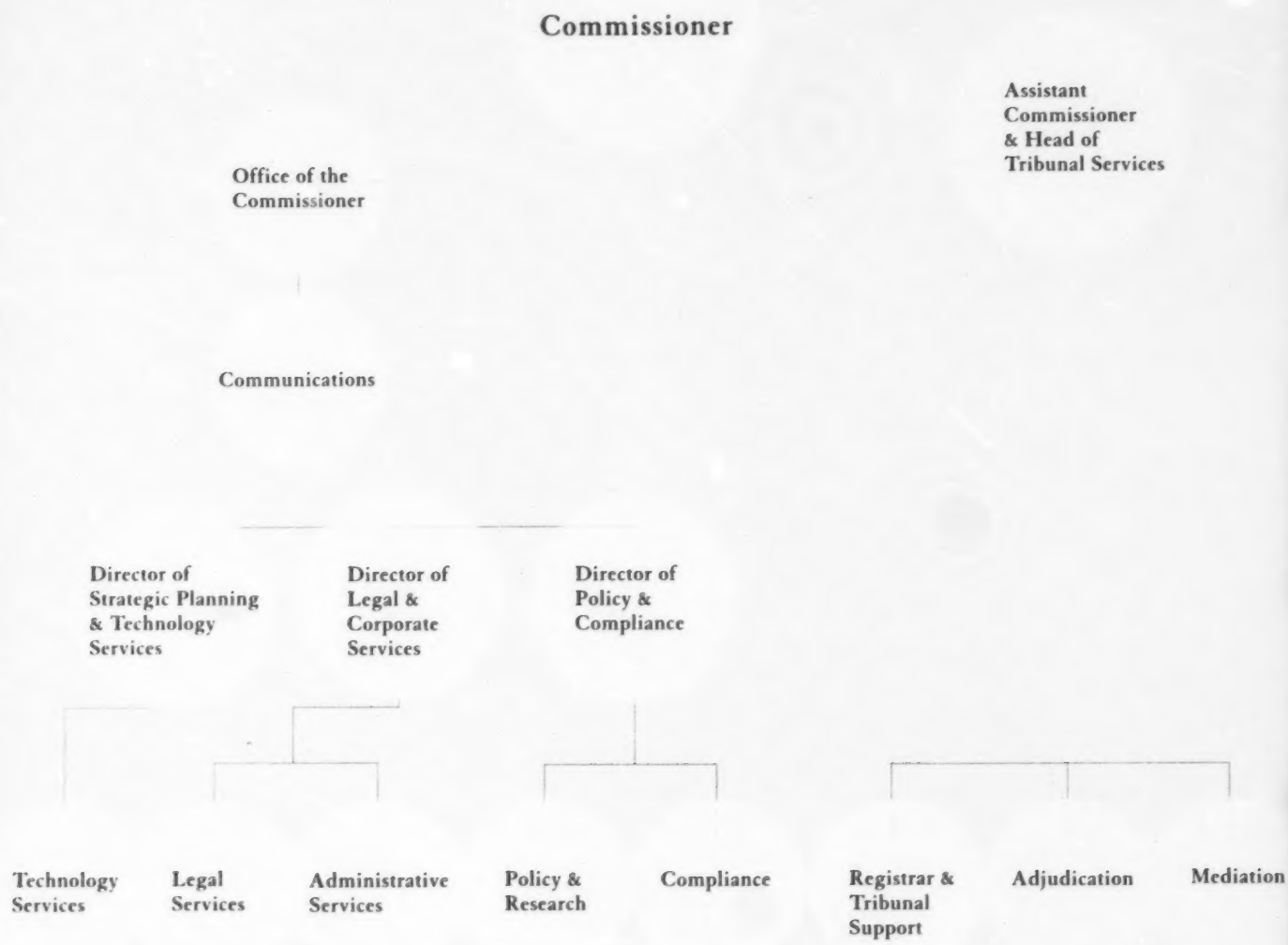
Ministry Consultations:

- Ministry of Agriculture and Food: *Food Safety and Quality Act*;
- Ministry of the Attorney General: *Remedies for Organized Crime and Other Unlawful Activities Act*; authorization for Indirect Collection relating to the Ontario Emergency Victim Assistance Program;
- Ministry of Finance: *Public Sector Accountability Act*; Protocol for the disclosure of information relating to the sale of the Province of Ontario Savings Office;
- Ministry of Transportation: implementation of the *Road User Customer Service Improvement Act*; consultation on the annual report of the Ontario Highway Transport Board; consultation with the Transponder Research Project; comment on the Ignition Interlock Program;
- Ministry of Correctional Services: implementation of initiatives pursuant to the *Corrections Accountability Act*; review of Memorandum of Understanding for exchange of information with Citizenship and Immigration Canada;
- Ministry of the Solicitor General: Sex Offender Registry implementation;
- Ministry of Community and Social Services: Mandatory drug treatment for social assistance recipients; review of Family Responsibility Office contracts;
- Ministry of the Environment: Environet;
- Ministry of Health and Long-Term Care: Hepatitis C Transfusion Notification Plan; Personal Health Privacy Legislation; consultation on the Trillium Gift of Life Network; review of Smart Systems for Health and the ePhysician project;
- Ministry of Consumer and Business Services: Integrated address change project; *Personal Property Security Act* access project; private sector privacy legislation; amendments to the *Vital Statistics Act*;
- Ministry of Education: Ontario Student Number regulations; proposal for an elementary/secondary data warehouse; EQAO practices; regulation on the collection of personal information pursuant to the *Safe Schools Act, 2000*;
- Ministry of Colleges and Universities: amendments to the *Ontario Educational Communications Authority Act*;
- Ontario Securities Commission: System for Electronic Disclosure for Insiders (SEDI);
- Ontario Public Guardian and Trustee: amendments to the *Public Guardian and Trustee Act.*

Submissions Prepared:

- Submission to the Standing Committee on General Government re: Bill 159: the *Personal Health Information Privacy Act, 2000*;
- Second submission to the Standing Committee on General Government re: Bill 159: *Personal Health Information Privacy Act, 2000*;
- Submission in response to the federal Access to Information Review Task Force's consultation paper;
- A submission to the Canadian Radio-Television and Telecommunications Commission regarding *Public Notice CRTC 2001-56* and three submissions to the Commission regarding *Public Notice CRTC 2001-60-1.*

ORGANIZATIONAL **CHART**



FINANCIAL STATEMENT

	2001-2002 Estimates $	2000-2001 Estimates $	2000-2001 Actual $
Salaries and Wages	5,154,500	4,732,600	4,635,312
Employee Benefits	799,000	922,900	842,272
Transportation and Communications	162,300	163,700	151,111
Services	860,500	876,200	839,531
Supplies and Equipment	273,200	256,100	266,129
Total	**7,249,500**	**6,951,500**	**6,734,355**

APPENDIX I

Public Sector Salary Disclosure Act for the Calendar Year Ending December 31, 2001

Employees paid $100,000 or more in 2001

Surname	Position	Salary Paid	Taxable Benefits
Cavoukian, Ann	Commissioner	$157,826.31	$380.34
Mitchinson, Tom	Assistant Commissioner	$187,109.83	$381.55
Anderson, Ken	Director, Legal and Corporate Services	$178,033.66	$369.24
Beamish, Brian	Director, Policy & Compliance	$104,925.52	$242.69
Challis, William	General Counsel	$178,642.96	$365.48
Goldstein, Judith	Legal Counsel	$140,177.46	$284.40
Goodis, David	Senior Adjudicator/Manager, Adjudication	$139,052.09	$283.39
Higgins, John	Legal Counsel	$153,714.26	$313.33
O'Donoghue, Mary	Manager, Legal Services	$143,526.08	$287.62
Swaigen, John	Legal Counsel	$157,822.69	$320.25

Prepared under the *Public Sector Salary Disclosure Act, 1996*

(Please note: Some of these amounts include retroactive payments during 2001 for past years.)